2. Private Equities and MorAmerica Capital may file on a consolidated basis pursuant to the above condition only so long as the amount of Private Equities' total consolidated assets invested in assets other than (a) securities issued by MorAmerica Capital or (b) securities similar to those in which MorAmerica Capital invests, does not exceed 10%.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1289 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20830; No. 812–9306]

Offitbank Variable Insurance Fund, Inc., et al.

January 11, 1995.

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

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

APPLICANTS: Offitbank Variable Insurance Fund, Inc. (''Fund'') and Offitbank (collectively, ''Applicants'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), and 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 exempting themselves and certain affiliated and unaffiliated life insurance companies (''Participating Insurance Companies'') and their separate accounts (''Separate Accounts'') to the extent necessary to permit shares of any current or future investment series of the Fund to be sold to and held by Separate Accounts funding variable annuity and variable life insurance contracts issued by Participating Insurance Companies.

FILING DATE: The application was filed on October 24, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 6, 1995, 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 requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Stephen Brent Wells, Offitbank Variable Insurance Fund, Inc., 237 Park Avenue, Suite 910, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Attorney, at (202) 942–0554, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a Maryland corporation registered under the 1940 Act as an open-end management investment company.

2. The Fund's common stock is divided into separate series, each series representing an interest in a separate investment portfolio (''Existing Portfolios''). The Board of Directors of the Fund is authorized to classify or reclassify any unissued shares of the portfolios (''New Portfolios'') (together with Existing Portfolios, ''Portfolios'').

3. The Portfolios will serve as investment vehicles for various types of variable annuity and variable life insurance contracts (''Variable Contracts''). Portfolio shares will be offered to Separate Accounts of certain affiliated and unaffiliated Participating Insurance Companies which enter into participation agreements (''Participation Agreements'') with the Portfolios and the Fund.[1]

4. Offitbank serves as investment adviser to each of the Existing Portfolios. Offit Funds Distributor, Inc. (''Offit'') serves of the distributor for the Existing Portfolios. Offitbank is a New York state chartered trust company and is exempt from registration as an investment advisor or as a broker dealer.[2] Offit is a wholly-owned subsidiary of Furman Selz Incorporated, an unaffiliated, privately-held corporation.[3]

[1] Applicants represent that the Separate Accounts will be unit investment trusts, and that, during the Notice Period, the application will be amended to reflect this representation.

[2] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

[3] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section (6)(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Exemptive relief is sought by Applicants and affiliated and unaffiliated Participating Insurance Companies and their Separate Accounts to the extent necessary to permit mixed and shared funding, as defined below.

2. Rule 6e–2(b)(15) provides partial exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to separate accounts registered under the 1940 Act as unit investment trusts to the extent necessary to offer and sell scheduled premium variable life insurance contracts. The relief provided by the rule also extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

3. The exemptions granted by Rule 6e–2(b)(15) are available only to a management investment company underlying a separate account (''underlying fund'') that offers its shares exclusively to variable life insurance separate accounts of a life insurer, or of any other affiliated life insurance company, issuing scheduled premium variable life insurance contracts. The relief granted by Rule 6e–2(b)(15) is not available to the separate account issuing scheduled premium variable life insurance contracts if the underlying fund also offers its shares to a separate account issuing variable annuity or flexible premium variable life insurance contracts. The use of a common underlying fund as an investment vehicle for both variable annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as ''mixed funding.''

4. Additionally, the relief granted by Rule 6e–2(b)(15) is not available to separate accounts issuing scheduled premium variable life insurance contracts if the underlying fund also offers its shares to unaffiliated life insurance company separate accounts funding variable contracts. The use of a common fund as an underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.''

5. Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to separate accounts registered as unit investment trusts that offer flexible premium variable life insurance contracts. The exemptive relief extends to a separate account's investment

adviser, principal underwriter, and sponsor or depositor. These exemptions are available only where the underlying fund of the separate accounts offers its 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 * * *.'' Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate accounts, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of affiliated life insurance companies.

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

7. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-ended investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2). Subparagraphs (b)(15)(i) and (ii) of Rules 6e–2 and 6e–3(T) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by subparagraphs (b)(15)(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by subparagraph (b)(15)(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer 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) are participating in the management or administration of the fund.

8. Applicants state that the partial relief granted under subparagraphs (b)(15) of Rules 6e–2 and 6e–3(T) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in that organization. Applicants further submit that there is no regulatory reason to apply the provisions of Section 9(a) to the many individuals in various unaffiliated Participating Insurance companies that may utilize the Portfolios as the funding medium for variable contracts because of mixed and shared funding.

9. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3T provide partial exemptions from Sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contractowners in certain limited circumstances.[4]

10. Voting instructions may be disregarded under subparagraph (b)(15)(iii)(A) of Rules 6e–2 and 6e–3(T) if they would cause the underlying fund to make, or refrain from making, certain investments which would result in changes to the subclassification or investment objectives of the underlying fund, or to approve or disapprove any contract between a fund and its investment advisers, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(15)(i) and (b)(7)(ii)(A) of each Rule.

11. Under subparagraph (b)(15)(iii)(B) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(*2*) of Rule 6e–3(T), an insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in the underlying fund's investment objectives, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each Rule.

12. Applicants submit that shared funding by affiliated life insurance 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. In this regard, Applicants state 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. Accordingly, Applicants submit that the fact that different insurer may be domiciled in different states does not create a significantly different or enlarged problem.

13. Applicants state further that, under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), the right of an insurance company to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser. Applicants state that 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.

14. Applicants submit that mixed and shared funding should benefit variable contractowners by: (a) eliminating a significant portion of the costs of establishing and administering separate funds; (b) permitting the expansion of the variety of funding options available under existing variable contracts; and (c) encouraging more insurance companies to offer variable contracts, resulting 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.

15. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Applicants state that each of the Portfolios will be managed to attempt to achieve its investment objective and not to favor or disfavor any particular Participating Insurance Company, separate account, or type of insurance product. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of

[4] Applicants request no relief for variable annuity separate accounts from the disqualification or pass-through voting provisions.

mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of the Fund shall consist of persons who are not ''interested persons'' of the Fund as defined by Section 2(a)(19) of the 1940 Act and Rules thereunder, and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any Director(s), then the operation of this conditions shall be suspended: (i) for a period of 45 days, if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board of the Fund will monitor the Portfolios for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in any of the Portfolios. A material irreconcilable conflict may arise for a variety of reasons, including:

(a) State insurance regulatory authority action;

(b) A change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities;

(c) An administrative or judicial decision in any relevant proceeding;

(d) The manner in which investments of a Portfolio are being managed;

(e) A difference among voting instructions given by a variable annuity and variable life insurance contractowners; or

(f) A decision by a Participating Insurance Company to disregard contractowners' voting instructions.

3. Participating Insurance Companies and Offitbank will report any potential or existing conflicts, of which they become aware, to the Board of the Fund. Participating Insurance Companies and Offitbank will be obligated to assist the 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 Board whenever contractowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies investing in a Portfolio under their Participation Agreements, and those Participation Agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners.

4. If a majority of the Board of the Fund, or a majority of the Independent Directors, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of Independent Directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Portfolios and reinvesting those assets in a different investment medium (including another Applicant, if any) or submitting the question whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies that votes in favor of such segregation), or offering to the affected contractowners 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 Participating Insurance Company's decision to disregard contractowner 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 Offitbank (on behalf of one or more of the Portfolios), to withdraw its Separate Account's investment therein, 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 determination by the Board of the Fund that an irreconcilable material conflict exists and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreements, and these responsibilities will be carried out with a view only to the interests of the contractowners.

For purposes of this condition, a majority of Independent Directors shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or Offitbank be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority of contractowners materially affected by the irreconcilable material conflict.

5. The determination by the Board of the Fund of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participating Insurance Companies in the Portfolios.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contractowners. Accordingly, Participating Insurance Companies will vote shares of a Portfolio held in their Separate Accounts in a manner consistent with timely voting instructions received from contractowners. Each Participating Insurance Company also will vote shares of a Portfolio held in its Separate Accounts for which no timely voting instructions from contractowners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts participating in a Portfolio calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Portfolio shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreements.

7. Each Portfolio will notify all Participating Insurance Companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Portfolio shall disclose in its Prospectus that:

(a) Its shares may be offered to insurance company separate accounts that fund annuity and life insurance contracts of Participating Insurance Companies that may or may not be affiliated with one another;

(b) Because of differences of tax treatment or other considerations, the

interests of various contractowners might at some time be in conflict; and

(c) The Board of the Fund will monitor for any material conflicts and determine what action, if any, should be taken.

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

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

10. The Portfolios 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 Portfolios), and, in particular, each Portfolio either will provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or, as each Portfolio currently intends, comply with Section 16(c) of the 1940 Act (although the Portfolios are not trusts described in this section) as well as with Section 16(a) and, if and when applicable, Section 16(b).[5] Further, each Portfolio will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may adopt with respect thereto.

11. The Participating Insurance Companies and/or Offitbank shall, at least annually, submit to the Board of the Fund such reports, materials or data as the Board may reasonably request so that the Board may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials, and data upon reasonable request of the Board shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreements.

[5] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

Conclusion

For the reasons stated above, Applicants assert 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. 95–1233 Filed 1–18–95; 8:45 am]

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DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 2150]

Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State Department.

ACTION: Notice.

SUMMARY: At its Thirteenth Meeting in Hobart, Tasmania, October 26 to November 4, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted the conservation measures and the resolution listed below, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with Article IX, paragraph 6(A) of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, define the reporting requirements, and specify measures that must be taken to minimize the incidental taking of non-target species.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments on or before February 8, 1995.

FOR FURTHER INFORMATION CONTACT: Erica Keen, Division of Polar Affairs, Office of Oceans Affairs (OES/OA/PA), Room 5801, Department of State, Washington, D.C. 20520, (202)647–3262.

SUPPLEMENTARY INFORMATION:

Conservation Measures Adopted at the Thirteenth Annual Meeting of CCAMLR

At its Thirteenth Annual Meeting in Hobart, Tasmania, October 26 to November 4, 1994, the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted the following conservation measures and resolution. The conservation measures addressing catch limitations were adopted in accordance with Conservation measure 7/V and therefore enter into force immediately.

Conservation Measures Adopted in 1994

Conservation Measure 18/XIII

Procedure for According Protection to CEMP Sites

The Commission,

Bearing in mind that the Scientific Committee has established a system of sites contributing data to the CCAMLR Ecosystem Monitoring Program (CEMP), and that additions may be made to this system in the future;

Recalling that it is not the purpose of the protection accorded to CEMP sites to restrict fishing activity in adjacent waters;

Recognizing that studies being undertaken at CEMP sites may be vulnerable to accidental or willful interference;

Concerned, therefore, to provide protection for CEMP sites, scientific investigations and the Antarctic marine living resources therein, in cases where a Member or Members of the Commission conducting or planning to conduct CEMP studies believes such protection to be desirable;

hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

1. In cases where a Member or Members of the Commission conducting, or planning to conduct, CEMP studies at a CEMP site believe it desirable that protection should be accorded to the site, it, or they, shall prepare a draft management plan in accordance with Annex A to this Conservation Measure.