the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on December 14, 1994 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its Security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before February 2, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1232 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20831; 34–35225; 812–9028]

MACC Private Equities Inc., et al.; Notice of Application

January 12, 1995.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Investment Company Act'') and the Securities Exchange Act of 1934 (the ''Exchange Act'').

APPLICANTS: MACC Private Equities Inc. (''Private Equities''), MorAmerica Capital Corporation (''MorAmerica Capital''), and InvestAmerica Investment Advisors, Inc. (''InvestAmerica'').

RELEVANT ACT SECTIONS: Order requested under sections 17(d) and 57(a)(4) of the Investment Company Act and rule 17d–1 thereunder authorizing certain joint transactions, under section 57(c) of the Act for an exemption from sections 57(a) (1), (2), and (3) of the Act, and under section 6(c) of the Act for an exemption from sections 12(d), 18(a), and 61(a) of the Act. Order also requested under section 12(h) of the Exchange Act for an exemption from section 13(a) of the Exchange Act.

SUMMARY OF APPLICATION: Applicants request an order to permit Private Equities to engage in certain transactions with its wholly-owned subsidiary, MorAmerica Capital. The order also would permit modified asset coverage requirements for Private Equities and MorAmerica Capital, and permit Private Equities and MorAmerica Capital to co-invest with certain affiliated entities. In addition, the order would permit Private Equities and MorAmerica Capital to file certain Exchange Act reports on a consolidated basis.

FILING DATE: The application was filed on May 31, 1994 and amended on August 8, 1994, and November 9, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

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 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 writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants, Suite 310, 101 Second Street S.E., Cedar Rapids, Iowa 52401.

FOR FURTHER INFORMATION CONTACT:

Elaine M. Boggs, Staff Attorney, at (202) 942–0576, or Robert A. Robertson, 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.

Applicants' Representations

1. Private Equities and its wholly-owned subsidiary, MorAmerica Capital, intend to register under the Investment Company Act as business development companies (''BDCs''). The investment objective of Private Equities is long-term capital appreciation through venture capital investments in small companies (''Portfolio Companies''). MorAmerica Capital is licensed to operate as a small business investment company (''SBIC'') under the Small Business Investment Act of 1958. Applicants chose a two-tier structure so that Private Equities could hold certain assets that a SBIC is not permitted to hold.

2. Private Equities has been formed pursuant to a plan of reorganization (the ''Plan'') for the MorAmerica Financial Corporation (''MFC'') and Morris Plan Liquidation Company (''Morris Plan''). Under the Plan, Private Equities will be the successor by merger to MFC, Morris Plan, and certain affiliates. In addition to cash and miscellaneous assets, many of which are being held for sale, Private Equities' primary asset will be all of the issued and outstanding common stock of MorAmerica Capital.

3. InvestAmerica is the investment adviser for both Private Equities and MorAmerica Capital. The principals of InvestAmerica are the founders and principals of InvestAmerica Venture Group, Inc. (''Venture Group'') (collectively with InvestAmerica, the ''InvestAmerica Companies''). The Venture Group manages the Iowa Venture Capital Fund L.P. (the ''Iowa Fund''), which is a venture capital fund that is exempt from the Investment Company Act pursuant to section 3(c)(1) of the Act. The Iowa Fund is not presently making any new investments but is making distributions to partners as investments mature or are sold. The Iowa Fund and MorAmerica Capital presently are co-invested in the securities of five Portfolio Companies.

4. The requested order would permit Private Equities and MorAmerica Capital to operate effectively as one company. Specifically, the requested relief would permit MorAmerica Capital and Private Equities to (a) engage in transactions with each other, (b) engage in transactions with Portfolio Companies that would not otherwise be prohibited if MorAmerica Capital and Private Equities were one company, and (c) allow MorAmerica Capital to have the maximum amount of borrowing permitted by the Small Business Investment Act of 1958 and the Investment Company Act. The order also would permit MorAmerica Capital and/or Private Equities to co-invest with

certain affiliated companies. In addition, the order would permit Private Equities and MorAmerica Capital to file certain reports required by the Exchange Act on a consolidated basis.

Applicants' Legal Analysis

Capital Structure

1. Section 12(d) of the Investment Company Act

a. Section 12(d)(1) of the Investment Company Act, made applicable to BDC's by section 60, limits the amount of securities a registered investment company may hold of other investment companies. Rule 60a–1 exempts a BDC's acquisition of the securities of a wholly-owned SBIC from sections 12(d)(1) (A) and (C). Thus, the transfer of assets from Private Equities to MorAmerica Capital is exempt from these provisions. Section 12(d)(1), however, also applies to the activities of MorAmerica Capital, and loans made by Private Equities to MorAmerica Capital may violate section 12(d)(1) if such loans were considered purchases by MorAmerica Capital of the securities of Private Equities. Accordingly, applicants request an exemption from section 12(d)(1) to permit MorAmerica Capital's acquisition of those securities of Private Equities representing indebtedness.

2. Sections 57(a) (1), (2), and (3)

a. Sections 57(a) (1), (2), and (3) of the Investment Company Act prohibit certain affiliated persons of a BDC from engaging in certain transactions with the BDC. Such affiliated persons include, with limited exceptions not relevant here, entities which control, are controlled by, or under common control with the BDC. Because Private Equities is the sole equity holder of MorAmerica Capital, Private Equities and MorAmerica Capital are affiliated persons of each other. Thus, applicants request an exemption from sections 57(a) (1), (2), and (3) for any transaction solely between Private Equities and MorAmerica Capital.

b. In addition, Private Equities and/or MorAmerica Capital may wish to invest in certain Portfolio Companies that may be considered affiliates of the other investing company as a result of the other's ownership of five percent or more of the Portfolio Company's stock. Applicants will not in all instances be able to rely on rule 57b–1, which exempts from section 57(a) transactions between BDC's and specific downstream affiliates. Thus, applicants request an order to exempt any transaction from section 57(a) involving Private Equities and/or MorAmerica Capital and any Portfolio Company affiliated with either or both, but only to the extent that any such transaction would not be prohibited if MorAmerica Capital and Private Equities were not separate companies.

3. Sections 18 and 61 of the Investment Company Act

a. Section 18(a) of the Investment Company Act prohibits a registered closed-end investment company from issuing any class of senior security unless the company complies with the asset coverage requirements set forth in the section. ''Asset coverage'' is defined in section 18(h) to mean the ratio which the value of the total assets of an issuer, less all liabilities not represented by senior securities, bears to the aggregate amount of senior securities of such issuer. Section 61 makes section 18, with certain modifications, applicable to a BDC. Private Equities may be required to comply with the asset coverage requirements of section 18 on a consolidated basis because it may be an indirect issuer of senior securities with respect to MorAmerica Capital's indebtedness. Accordingly, applicants request relief exempting Private Equities and MorAmerica Capital from section 18(a) and 61(a) to permit the following transactions: (a) Private Equities and MorAmerica Capital to issue and sell to banks, insurance companies, and other financial institutions their secured or unsecured promissory notes, or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement; (b) MorAmerica Capital to obtain financing that the Small Business Administration permits for SBIC's; (c) MorAmerica Capital to borrow from Private Equities and Private Equities to borrow from MorAmerica Capital; and (d) Private Equities to guarantee any borrowings by MorAmerica Capital.

4. Sections 57 (a)(4) and (d) of the Investment Company Act and Rule 17d–1 Thereunder

a. Sections 57 (a)(4) and (d) of the Investment Company Act prohibit certain affiliated persons specified in section 57 (b) and (e), respectively, from participating in joint transactions with a BDC in contravention of rules and regulations prescribed by the SEC. Rule 17d–1 under the Act applies to transactions prohibited under sections 57 (a)(4) and (d) through section 57(i). Rule 17d–1 prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the SEC has granted an order permitting such transaction.

b. Applicants request an order under sections 57 (a)(4) and (d) and rule 17d–1 to permit Private Equities or MorAmerica Capital to invest in Portfolio Companies in which the other is or proposes to be an investor, but only to the extent that such transaction would not be prohibited if MorAmerica Capital were deemed to be part of Private Equities and not a separate company.

Co-Investing

1. Section 57(a)(4) of the Investment Company Act and Rule 17d–1 Thereunder

a. Applicants request an order to permit Private Equities and/or MorAmerica Capital to co-invest with companies managed by InvestAmerica and the Venture Group, including the Iowa Fund (''Managed Affiliates'') now or in the future. Because InvestAmerica and the Venture Group are under common control, a Managed Affiliate also would be under common control with Private Equities and MorAmerica Capital. Thus, a Managed Affiliate would be affiliated with Private Equities and MorAmerica Capital under section 2(a)(3) of the Investment Company Act. Accordingly, applicants and the Managed Affiliates, absent an exemptive order, would be prohibited under section 57(a)(4) of the Investment Company Act from engaging in co-investment transactions.

Consolidated Reporting

1. Section 54 of the Investment Company Act and Section 12 of the Exchange Act

a. Section 54 of the Investment Company Act provides that a closed-end company may elect BDC treatment under the Investment Company Act, if the company has either a class of equity securities registered under section 12 of the Exchange Act or has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities. Section 12(g) of the Exchange Act requires certain issuers to register under the Exchange Act. Private Equities will have securities registered under section 12 of the Exchange Act. In order to elect BDC treatment, MorAmerica Capital must register its securities under the Exchange Act, even though it is not required to do so by section 12(g) of the Exchange Act.

b. By filing a registration statement under section 12 of the Exchange Act, absent an exemption, MorAmerica Capital would be required by section 13(a) of the Exchange Act to file periodically with the SEC, even though

MorAmerica Capital will have only one equity holder. Accordingly, applicants request an order under the Exchange Act exempting MorAmerica Capital from the reporting requirements of section 13(a) of the Exchange Act to permit it to file consolidated reports with Private Equities.

Standards for Relief

1. Section 6(c) of the Investment Company Act permits the SEC to exempt any person or transaction from any provision of the Act, if 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 of the Act. Applicants state that the operation of Private Equities as a BDC with a wholly-owned SBIC subsidiary is intended to permit Private Equities to expand the scope of its operations beyond that which would be permitted to it as an SBIC. Applicants further state that the requested exemptions would permit Private Equities and MorAmerica Capital to operate effectively as one company even though they will be divided into two legal entities. Accordingly, applicants believe that the requested exemptions from sections 12(d), 18(a), and 61(a) meet the section 6(c) standards.

2. Section 57(c) permits the SEC to grant an order permitting a transaction otherwise prohibited by sections 57(a)(1), (2), and (3) if it finds that the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that the requested exemptions meet these standards.

3. Section 57(i) of the Investment Company Act provides that the rules and regulations of the SEC under sections 17 (a) and (d) applicable to registered closed-end investment companies shall apply to transactions subject to sections 57(a) and (d) in the absence of rules under sections 57(a) and (d). No rules with respect to joint transactions have been adopted under sections 57(a) and (d). Rule 17d–1 under the Act prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the SEC has granted an order permitting the transaction. Applicants believe that the requested authorization under sections 57(a)(4) and (d) and rule 17d–1 is appropriate.

4. Section 12(h) of the Exchange Act provides that the SEC may exempt an issuer from section 13 of the Exchange Act if the SEC finds that by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. Private Equities is the sole equity holder of MorAmerica Capital and applicants represent that there will be no trading in MorAmerica securities. Further, applicants state that the nature and extent of MorAmerica Capital's activities are such that its activities will be fully reported through consolidated reporting in accordance with normal accounting rules. Accordingly, applicants believe that the requested exemption meets the Exchange Act's section 12(h) standards.

Applicants' Conditions

Applicants agree that the following conditions will govern transactions under the requested order:

Capital Structure Conditions

1. Private Equities will at all times own and hold beneficially and of record all of the outstanding capital stock of MorAmerica Capital.

2. MorAmerica Capital will have the same fundamental investment policies as Private Equities, as set forth in Private Equities' registration statement; MorAmerica Capital will not engage in any other activities described in section 13(a) of the Investment Company Act, except in each case as authorized by the vote of a majority of the outstanding voting securities of Private Equities.

3. No person shall serve or act as investment adviser to MorAmerica Capital unless the directors and shareholders of Private Equities shall have taken the action with respect thereto also required to be taken by the directors and shareholders of MorAmerica Capital.

4. No person shall serve as a director of MorAmerica Capital unless elected as a director of Private Equities at its most recent annual meeting, as contemplated by section 16(a) of the Investment Company Act. Vacancies on Private Equities' board of directors will be filled in the manner provided for in section 16(a). Notwithstanding the foregoing, the board of directors of MorAmerica Capital will be elected by Private Equities as the sole shareholder of MorAmerica Capital, and such board will be composed of the same persons that serve as directors of Private Equities.

5. Private Equities will not itself issue or sell any senior security and Private Equities will not cause or permit MorAmerica Capital to issue or sell any senior security of which Private Equities or MorAmerica Capital is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Investment Company Act; provided that immediately after the issuance or sale of any such notes or evidences of indebtedness by either Private Equities or MorAmerica Capital, Private Equities and MorAmerica Capital on a consolidated basis, and Private Equities individually, shall have the required asset coverage, except that, in determining whether Private Equities and MorAmerica Capital on a consolidated basis have the asset coverage required by section 61(a), any borrowings by MorAmerica Capital from Private Equities, for purposes of the definition of ''asset coverage'' in section 18(h), shall be treated as indebtedness not represented by senior securities.

6. Private Equities will acquire securities of MorAmerica Capital representing indebtedness only if, in each case, the prior approval of the SBA has been obtained. In addition, Private Equities and MorAmerica Capital will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of the SBA has been obtained.

Co-Investing Conditions

1. a. To the extent that Private Equities and MorAmerica Capital are considering new investments, InvestAmerica will review investment opportunities on their behalf, including investments being considered on behalf of the Managed Affiliates. InvestAmerica will determine whether a particular investment is eligible for investment by Private Equities and/or MorAmerica, as the case may be.

b. If InvestAmerica deems an investment eligible for investment by Private Equities and/or MorAmerica Capital (the ''Investing Company''), InvestAmerica will determine what it considers to be an appropriate amount that the Investing Company should invest in the particular investment. Where the aggregate amount recommended for the Investing Company and that sought by the Managed Affiliates is greater than the amount available for investment, the amount available for purchase by the Investing Company shall be determined on a *pro rata* basis determined by dividing the net assets of the Investing Company by the sum of the net assets of the Investing Company and each of the Managed Affiliates seeking to make the investment.

c. Following the making of the determinations referred to in (a) and (b), InvestAmerica will distribute written information concerning all eligible investments to the Investing Company's non-interested directors. Such information will include the name of each Managed Affiliate that proposes to make the investment and the amount of each proposed investment.

d. Information regarding InvestAmerica's preliminary determinations will be reviewed by the Investing Company's non-interested directors. The Investing Company will only make a joint investment with a Managed Affiliate if a required majority (as defined in section 57(o) of the investment Company Act) (''Required Majority'') of the Investing Company's non-interested directors conclude, prior to the acquisition of the investment, that:

i. the terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of Private Equities and do not involve overreaching of the Investing Company or such shareholders on the part of any person concerned;

ii. the transaction is consistent with the interests of the shareholders of Private Equities and is consistent with the Investing Company's investment objectives and policies as recited in filings made by the Investing Company under the Securities Act of 1933, as amended, its registration statement and reports filed under the Exchange Act, as amended, and its reports to shareholders;

iii. the investments by the Managed Affiliates would not disadvantage the Investing Company and that participation by the Investing Company would not be on a basis different from or less advantageous than that of Managed Affiliates; and

iv. the proposed investment by the Investing Company will not benefit InvestAmerica or any affiliated entity, other than the Managed Affiliates making the proposed joint investment, except to the extent permitted pursuant to sections 17(e) and 57(k) of the Investment Company Act.

e. An Investing Company may decline to participate in the co-investment, or may purchase less than its full allocation.

2. The Investing Company will not make an investment for its portfolio if a Managed Affiliate or InvestAmerica or a person controlling, controlled by, or under common control with InvestAmerica is an existing investor in such company; with the exception of the five present co-investments of MorAmerica Capital and the Iowa Fund.

3. All purchases of securities by the Investing Company effected with a Managed Affiliate as a joint participant shall consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, at the same price and on the same terms and conditions, and the settlement dates will be the same.

4. If one or more Managed Affiliates elect to sell, exchange, or otherwise dispose of a security that is also held by the Investing Company, InvestAmerica will notify the Investing Company of the proposed disposition at the earliest practical time and the Investing Company will be given the opportunity to participate in such sale on a proportionate basis, at the same price and on the same terms and conditions as those applicable to Managed Affiliates. InvestAmerica will formulate a recommendation as to participation by the Investing Company in such a disposition, and provide a written recommendation to the Investing Company's non-interested directors. The Investing Company will participate in such disposition to the extent that a Required Majority of its non-interested directors determine that it is in the Investing Company's best interest. The Investing Company and each Managed Affiliate will bear its own expenses associated with the disposition of a portfolio security.

5. If a Managed Affiliate desires to make a ''follow-on'' investment (*i.e.*, an additional investment in the same entity) in a particular portfolio company whose securities are held by the Investing Company or to exercise warrants or other rights to purchase securities of such an issuer, InvestAmerica will notify the Investing Company of the proposed transaction at the earliest practical time. InvestAmerica will formulate a recommendation as to the proposed participation by the Investing Company in a follow-on investment, and provide the recommendation to the Investing Company's non-interested directors along with notice of the total amount of the follow-on investment. The Investing Company's non-interested directors will make their own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment available to a Managed Affiliate and the Investing Company is not based on the amount of their initial investment, the relative amount of investment by each Managed Affiliate participating in a follow-on investment and the Investing Company will be based on a ratio derived by comparing the remaining funds available for investment by the Investing Company and each such Managed Affiliate with the total amount of the follow-on investment. The Investing Company will participate in such investment to the extent that a Required Majority of its non-interested directors determine that it is in the Investing Company's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The Investing Company's non-interested directors will review quarterly all information concerning co-investments made by the Investing Company, including co-investments in which one or more Managed Affiliates declined to participate, so that they may determine whether all investments made during the preceding quarter, including those investments they declined, complied with the conditions set forth above.

7. The Investing Company will maintain the records required by section 57(f)(3) of the Investment Company Act as if each of the transactions permitted under these conditions were approved by the Investing Company's non-interested directors under section 57(f).

8. No non-interested director of the Investing Companies will be a non-interested director of a Managed Affiliate with which the Investing Company co-invests.

Consolidated Reporting Conditions

1. Private Equities will (a) file with the SEC on behalf of itself and MorAmerica Capital, all information and reports required to be filed with the SEC under the Exchange Act and other federal securities laws, including financial statements prepared solely on a consolidated basis as to Private Equities and MorAmerica Capital, such information and reports to be in satisfaction of the separate filing obligations of MorAmerica Capital; and (b) provide to its shareholders such information and reports required to be disseminated to Private Equities' shareholders, including financial statements prepared solely on a consolidated basis as to Private Equities and MorAmerica Capital, such reports to be in satisfaction of the separate filing obligations of Private Equities. Notwithstanding anything in this condition, Private Equities will not be relieved of any of its reporting obligations including, but not limited to, any consolidating statement setting forth the individual statement of MorAmerica Capital required by rule 6–03(c) of Regulation S–X.

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