The ABN AMRO Applicants

1. The foreign custody arrangements which involve or rely upon AAEB and AAGC will comply with the provisions of rule 17f–5 in all respects except those provisions relating to (a) the fact that each of AAEB and AAGC may not be technically a ''banking institution or trust company'' incorporated or organized under the laws of The Netherlands, and (b) the minimum shareholders' equity requirements for ''Eligible Foreign Custodians'' under rule 17f–5.

2. A U.S. Investment Company or a custodian or subcustodian for a U.S. Investment Company will deposit Securities with AAEB and AAGC through ABN AMRO only in accordance with a three-party contractual agreement (a ''Three Party Agreement'') that will remain in effect at all times during which AAEB and AAGC fail to meet all of the requirements of Rule 17f–5 (and during which such Securities remain deposited with AAEB and AAGC). Each Three Party Agreement will be a three-party agreement among (a) ABN AMRO, (b) AAEB or AAGC, and (c) the U.S. Investment Company or custodian or subcustodian of the Securities of the U.S. Investment Company. Under the Three Party Agreement, AAEB or AAGC will undertake to provide only specified custodial or subcustodial services. The Three Party Agreement will further provide that ABN AMRO will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by AAEB and AAGC of their respective responsibilities under the Three Party Agreement to the same extent as if ABN AMRO had been required to provide all custody services under such Three Party Agreement.

3. ABN AMRO currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in subsection (c)(2)(i) of rule 17f–5.

4. ABN AMRO will be regulated by DNB as a banking institution under the laws of The Netherlands.

The MeesPierson Applicants

1. The foreign custody arrangements which involve or rely upon MPEB and MPGCS will comply with the provisions of rule 17f–5 in all respects except those provisions relating to (a) the fact that each of MPEB and MPGCS may not be technically a ''banking institution or trust company'' incorporated or organized under the laws of The Netherlands, and (b) the minimum shareholders' equity requirement for ''Eligible Foreign Custodians'' under rule 17f–5.

2. A U.S. Investment Company or a custodian or subcustodian for a U.S. Investment Company will deposit Securities with MPEB and MPGCS through MeesPierson only in accordance with a three-party contractual agreement (a ''Three Party Agreement'') that will remain in effect at all times during which MPEB and MPGCS fail to meet all of the requirements of rule 17f–5 (and during which such Securities remain deposited with MPEB and MPGCS). Each Three Party Agreement will be a three-party agreement among (a) MeesPierson, (b) MPEB or MPGCS, and (c) the U.S. Investment Company or custodian or subcustodian of the Securities of the U.S. Investment Company. Under the Three Party Agreement, MPEB of MPGCS will undertake to provide only specified custodial or subcustodial services. The Three Party Agreement will further provide that MeesPierson will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by MPEB and MPGCS, of their respective responsibilities under the Three Party Agreement to the same extent as if MeesPierson had been required to provide all custody services under such Three Party Agreement.

3. MeesPierson currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in subsection (c)(2)(i) of rule 17f–5.

4. MeesPierson will be regulated by DNB as a banking institution under the laws of The Netherlands.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7841 Filed 3–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21858; File No. 812–9852]

Berger Institutional Products Trust, et al.

March 26, 1996.

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

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

APPLICANTS: Berger Institutional Products Trust (the ''Trust'') and Berger Associates, Inc. (''Berger Associates'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Trust and shares of any other investment company that is designed to fund insurance products and for which Berger Associates, or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively, with the Trust, the ''Funds'') to be sold to and held by: (a) Variable annuity and variable life insurance companies (the ''Participating Insurance Companies''); and (b) qualified pension and retirement plans outside the separate account context (the ''Plans'').

FILING DATE: The application was filed on November 8, 1995, and amended on March 20, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 22, 1996, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20459. Applicants, Kevin R. Fay, Vice President—Finance and Administration, Berger Associates, Inc., 210 University Boulevard #900, Denver, Colorado 80206.

FOR FURTHER INFORMATION CONTACT: Wendy Friedlander, Deputy Chief, at (202) 942–0670, 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 Public Reference Branch of the SEC.

Applicants' Representations

1. The Trust, an open-end, management investment company organized as a Delaware business trust, currently consists of three separate investment portfolios: the Growth Fund,

the Growth and Income Fund and the Small Company Fund. The Trust may create additional portfolios in the future.

2. Berger Associates serves as the investment adviser for each of the Trust's portfolios. Berger Associates is registered as an investment adviser under the Investment Advisers Act of 1940.

3. Applicants state that the Trust initially intends to offer its shares exclusively to Plans and to variable annuity separate accounts, but, upon the granting of the order requested in this application, contemplates offering its shares to one or more variable life insurance separate accounts established by insurance companies that may or may not be affiliated with one another.

4. The Participating Insurance Companies will establish their own separate accounts (the ''Accounts'') and design their own variable annuity and variable life insurance contracts (''Contracts''). Applicants state that the role of the Fund under this arrangement will consist of offering shares to the Accounts and fulfilling any conditions that the Commission may impose upon granting the order requested in the application.

5. Applicants state that the Funds can increase their asset base through the sale of shares of the Funds to the Plans. The Plans may choose any of the Funds as the sole investment option under a Plan or as one of several investment options. Participants in the Plans may be given an investment choice depending upon the Plan. Shares of any of the Funds sold by the Plans will be held by the trustees of the Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). Berger Associates will not act as investment adviser to any of the Plans that will purchase shares of the Funds. Applicants note that, pursuant to ERISA, pass-through voting is not required to be provided to participate in the Plans.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and depositor. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate account is referred to as ''mixed funding.'' The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed funding as well as shared funding.

2. Applicants state that because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Fund are also to be sold to Plans.

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

4. Applicants state that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Funds are also to be sold to Plans.

5. Applicants state that changes in the tax law have created the opportunity for the Funds to increase their asset base through the sale of Fund shares to the Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of the Contracts held in the Funds. The Code provides that such Contracts shall not be treated as annuity contracts or life insurance contracts for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5 (1989). The regulations provide that, to meet the 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 investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants therefore request relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed and shared funding.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rules 6e–2(b) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) 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 Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) 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) participate in the management or administration of the fund.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. The application states that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a).

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(a)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require such privileges.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

12. Applicants further represent that the Funds' sale of shares to the Plans does not impact the relief requested in this regard. As noted previously by Applicants, shares of the Funds sold to Plans would be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans.

13. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants asset that shared funding 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. Applicants note that where insurers are domicile in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could required action that is inconsistent with the requirements of insurance regulators in one or more other states in which other insurance companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

14. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate accounts's investment in the relevant Fund.

15. Applicants also argue 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 owners of the Contracts. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

16. Applicants state that there is no reason why the investment policies of a Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

17. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance

contracts held in the portfolios of management investment companies. Treasury Regulation 1.817.5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

18. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Plan is unable to net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their respective net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the variable contract.

19. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to the trustees of Plans. Applicants represent that the transfer agent for the Funds will inform each Participating Insurance Company of its share ownership in each separate account, and will inform the trustees of Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

20. Applicants contend that the ability of the Funds to sell their respective shares directly to Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the Accounts have rights only with respect to their shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Finally, Applicants state that there are no conflicts between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree that there are inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition that insurance companies usually are unable simply to redeem their separate accounts out of one fund and invest those monies in another fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Plans conflict, the issues can be almost immediately resolved because the trustees of the Plans can, independently, redeem shares out of the Funds.

22. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management (principally with respect to stock and money market investments); and the lack of name recognition by the public of certain insurers as investment professionals. Applicants contend that use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of Berger Associates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants represent that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by the Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

23. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous issuance of orders permitting mixed and shared funding where shares of a fund were sold directly to qualified plans such as the Plans.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Board of Trustees or Board of Directors of each Fund (each, a ''Board'') shall consist of persons who are not ''interested persons'' of the Funds, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the 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. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the Contract owners of all the Accounts investing in the respective Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are managed; (e) a difference in voting

instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners.

3. The Participating Insurance Companies, Berger Associates (or any other investment adviser of the Funds), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the ''Participants'') will report any potential or existing conflicts of which they become aware to the Board. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participant to inform the Board whenever it has determined to disregard voting instructions of Contract owners. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participants investing in the Funds under their agreements governing participation in the Funds and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants.

4. It if is determined by a majority of the Board, or by a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participant shall at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Accounts from the Funds and reinvesting such assets in a different investment medium including another portfolio of the relevant Fund or another Fund, or submitting the question of 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., variable annuity Contract owners or variable life insurance Contract owners of one or more Participants) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Plans from the affected Fund or individual Fund thereof and reinvesting those assets in a different investment medium, including another Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard voting instructions of the owners of the Contracts, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its Account's investment in that Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds. The responsibility to take such material action shall be carried out with a view only to the interests of Contract owners and participants in Plans. For purposes of this Condition (4), a majority of the disinterested members of the applicable Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the relevant Fund or Berger Associates or any Plan be required to establish a new funding medium for any Contract. Further, no Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any Contract if an offer to do so has been declined by a vote of a majority of Contract owners materially affected by the irreconcilable material conflict.

5. Any Board's determination of the existence of an irreconcilable material conflict and its implications will be made known promptly and in writing 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 as requiring pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Fund held in their 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 Accounts that participates in the Funds 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 Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Funds. Each Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received voting instructions.

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

8. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) Shares of the fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to Plans; (b) material irreconcilable conflicts may arise from mixed and shared funding; and (c) the Fund's Board will monitor the Funds for any material conflicts and determine what action, if any, should be taken.

9. Each Fund 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 Funds), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, (although the Funds are not within the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors or trustees and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and

shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. No less than annually, the Participants shall submit to the Boards such reports, materials, or data as those Boards may reasonably request so the Boards may carry out fully the conditions contained in these express conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials, and data to the Boards shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds.

12. If a Plan becomes an owner of 10% or more of the assets of a Fund, such Plan will execute a fund participation agreement with that Fund. A Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of the shares of the Fund.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7845 Filed 3–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21855; No. 812–9808]

Principal Aggressive Growth Fund., et al.

March 25, 1996.

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

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

APPLICANTS: Princor Management Corporation (''Princor Management''), Principal Aggressive Growth Fund, Inc., Principal Asset Allocation Fund, Inc., Principal Balanced Fund, Inc., Principal Bond Fund, Inc., Principal Capital Accumulation Fund, Inc., Principal Emerging Growth Fund, Inc., Principal Government Securities Fund, Inc., Principal Growth Fund, Inc., Principal High Yield Fund, Inc., Principal Money Market Fund, Inc., Principal Special Markets Funds, Inc., Principal World Fund, Inc., Princor Balanced Fund, Inc., Princor Blue Chip Fund, Inc., Princor Bond Fund, Inc., Princor Capital Accumulation Fund, Inc., Princor Cash Management Fund, Inc., Princor Emerging Growth Fund, Inc., Princor Government Securities Income Fund, Inc., Princor Growth Fund, Inc., Princor High Yield Fund, Inc., Princor Tax-Exempt Bond Fund, Inc., Princor Tax-Exempt Cash Management Fund, Inc., Princor Utilities Fund, Inc., Princor World Fund, Inc. (individually a ''Fund,'' collectively, ''Funds''), and such other registered investment companies (''Future Funds'') that in the future are advised by Princor Management or an affiliated person thereof.

RELEVANT 1940 ACT SECTIONS: Order requested under Rule 17d–1 of the 1940 Act.

SUMMARY OF APPLICATION: Exemptions requested to the extent necessary to permit the Funds and Future Funds to pool their daily cash balances into a single joint trading account (''Joint Account'') for the purpose of investing those balances in one or more short-term investment transactions, including repurchase agreements and short-term money market instruments, to the extent permitted by each Fund's or Future Funds's investment objectives, policies and restrictions.

FILING DATES: The application was filed on October 5, 1995, and amended on March 13, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on April 19, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for layers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Michael D. Roughton, Esq., The Principal Financial Group, Des Moines, Iowa 50392–0300.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Special 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 Public Reference Branch of the SEC.

Applicants' Representations

1. Each Fund is a Maryland corporation registered under the 1940 Act as an open-end, management investment company. Future Funds may include management investment companies organized in Maryland or in other states.

2. Princor Management is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as each Fund's investment adviser. Princor Management has retained sub-advisers to manage a number of Funds. Princor Management manages the short-term cash assets of each of the Funds except Principal Aggressive Growth Fund, Inc. and Principal Asset Allocation Fund, Inc. The short-term cash assets of those Funds are managed by their sub-adviser, Morgan Stanley Asset Management, Inc.[1]

3. Princor Management has discretion to purchase and sell securities for each Fund in accordance with its investment objectives policies and restrictions. Each Fund is authorized to invest in repurchase agreements, except Principal Capital Accumulation Fund., Inc., which will participate in repurchase transactions if and when it is authorized to do so. Each Fund is authorized to invest at least a portion of its uninvested cash assets in certain short-term money market instruments.

4. Bank of America National Trust and Savings Association (''Custodian'') currently is the custodian for all Funds except those Funds which will not participate in the proposed Joint Account for so long as they do not use Custodian: (a) Principal World Fund., Inc.; (b) Princor World Fund, Inc.; and (c) the International Portfolio of the Principal Special Markets Fund, Inc.

5. Applicants state that at the end of each trading day, it is expected that some or all of the Funds will have uninvested cash balances in their custodian accounts. Currently, such cash balances are used on an individual basis to invest in short-term instruments, including individual issues of commercial paper or United States Government agency paper. Applicants argue that these separate purchases result in certain inefficiencies which limit the return each of the Funds may

[1] Applicants state that Funds for which Princor Management or an affiliate does not manage short-term cash assets (including Principal Asset Allocation Fund, Inc. and Principal Aggressive Growth Fund, Inc.), are not expected to participate in the proposed joint account.