rules, the Federal awarding agency shall, within a reasonable time, obtain the requested data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

[FR Doc. 99–2220 Filed 2–3–99; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–23671; File No. 812–11344]

Rydex Variable Trust, et al.

January 29, 1999.

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

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (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) thereunder.

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

Applicants: Rydex Variable Trust and PADCO Advisors II, Inc.

Filing Date: The application was filed on October 7, 1998, amended and restated on December 17, 1998, and amended and restated on January 28, 1999.

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 February 24, 1999, 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 Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Morgan, Lewis & Bockius LLP, Attention: John H. Grady, Jr., Esq., and C. Ronald Rubley, Esq., One Logan Square, Philadelphia, PA 19103–6993.

FOR FURTHER INFORMATION CONTACT: Martha Peterson, Attorney, or Susan Olson, Branch Chief, 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, 450 Fifth Street, NW, Washington, DC (tel. (202) 942–8090).

Applicants' Representations

1. Rydex Variable Trust, a Delaware business trust, currently consists of 22 separate series, each for a separate portfolio (such portfolios, and additional portfolios that may be added in the future, are referred to herein individually as a ''Portfolio'' and collectively as ''Portfolios'').

2. PADCO serves as the investment advisor to Rydex Variable Trust and is registered as an investment advisor under the Investment Advisers Act of 1940.

3. Applicants state that shares of Portfolios of the Trust may be offered to variable annuity separate accounts and variable life insurance separate accounts established by Participating Insurance Companies that may or may not be affiliated with one another, and to Qualified Plans.

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

5. Applicants state that the Trust can increase its asset base through the sale of shares of the Trust to the Qualified Plans. The Qualified Plans may choose the Trust as the sole investment option under a Plan or as one of several investment options. Participants in the Qualified Plans may be given an investment choice depending upon the Qualified Plan. Shares of the Trust sold to a Qualified Plan will be held by the trustees of the Qualified Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA'').

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 Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions provided under 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 accounts 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 provided under Rule 6e–2(b)(15) is not applicable to a scheduled premium variable life insurance separate account that owns shares of an underlying fund where the underlying fund offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated insurance company. Therefore, Rule 6e–2(b)(15) does not provide exemptive relief for either mixed funding or shared funding.

2. Applicants state that with respect to Rule 6e–2, exemptive relief is also necessary if shares of the Trust are to be sold to Qualified Plans since the relief under Rule 6e–2 is available only where shares are offered exclusively to separate accounts of insurance companies.

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 provided under 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 with respect to Rule 6e–3(T), exemptive relief is also necessary if shares of the Trust are to be sold to Qualified Plans since the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts of insurance companies.

5. Applicants state that changes in the tax law have created the opportunity for the Trust to increase its asset base through the sale of Trust shares to the Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on fund investments underlying variable contracts. Specifically, the Code provides that a variable contract shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the investments, in accordance with regulations prescribed by the Treasury Department, are not adequately diversified. On March ,m 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 in pertinent part, an insurance company separate account may look through to the investments of a regulated investment company in which it invests in order to meet the diversification requirements, if all of the beneficial interests in the regulated investment company are held by separate 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 life insurance companies to hold shares in the same investment company in their separate accounts (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, in all probability, the sale of shares of the same investment company to both separate accounts and Qualified Plans was not envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(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 Trust to be offered and sold to, and held by, Qualified Plans, as well as separate accounts.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment advisor 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 advisor 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 the 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 Trust to Qualified 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)(b)(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. Applicants state that the Participating Insurance Companies will provide pass-through voting privileges to all Variable 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 advisor, 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 advisor, 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 sale of Trust shares to Qualified Plans does not impact the relief requested in this regard. Applicants note that shares of the Trust sold to Qualified Plans would be held by the trustees of such Qualified Plans as required by Section 403(a) of ERISA. Section 403(a) provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) is subject to the direction of a named fiduciary who

is not a trustee, in which case the trustee(s) is subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified 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, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Some Qualified Plans, however, may provide for the trustee, an investment advisor, or another named fiduciary to vote shares in accordance with instructions from plan participants. With respect to Qualified Plans whose governing documents do not provide plan participants with pass through voting, the issue of resolving any irreconcilable conflict with respect to voting is not present. With respect to Qualified Plans whose governing documents do provide plan participants with pass through voting privileges, Applicants state there is no reason to believe that plan participants will vote in a manner that would disadvantage Variable Contract owners.

13. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert 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 domiciled in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could require 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, Applicants state that the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against, and provide procedures for resolving, 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 account's investment in the relevant portfolio or fund.

15. Applicants also state 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 advisor initiated by contract owners. 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 Trust, to withdraw its investment in the Trust. 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 the Trust 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. Applicants represent that the Trust will not be managed to favor or disfavor any particular Participating Insurance Company or type of insurance product.

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 Qualified 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 Qualified Plans, these tax consequences do not raise any conflicts of interest with respect to the use of the Trust. When distributions are made, and the separate account or the Qualified Plan is unable to net purchase payments to make the distributions, the separate account or the Qualified Plan will request redemption of shares of the Trust at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act. The Qualified Plan will then make distributions in accordance with the terms of the Qualified 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 Qualified Plans. Applicants represent that the transfer agent for the Trust will inform each Participating Insurance Company of its share ownership in each Separate Account, and will inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement of Rules 6e–2 and 6e–3(T).

20. Applicants contend that the ability of the Trust to sell its shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, in favor of any contract owner or any participant under a Qualified Plan. Regardless of the rights and benefits of participants and contract owners under the respective Qualified Plans and Variable Contracts, the Qualified Plans and the Separate Accounts have rights only with respect to their shares of the Trust. Such shares may be redeemed only at net asset value. No shareholder of the Trust 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 Qualified 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 request redemption out of one fund and invest those moneys in another fund. Generally, to accomplish such redemptions and transfers, complex and

time consuming transactions must be undertaken. Conversely, trustees of Qualified Plans can make the decision quickly and implement redemption of shares from a Trust and reinvest the moneys in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified 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 Qualified Plans conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, on their own, redeem shares out of the Trusts.

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 Trust as common investment media for the Variable Contracts would reduce these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of the responsible advisors and their affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Trust available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Variable 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 Trust to Qualified Plans should increase the amount of assets available for investment by the Trust, thereby promoting economies of scale and increased safety through greater diversification.

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 Qualified Plans.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Trust's Board shall consist of persons who are not ''interested persons'' of the Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona-fide resignation of any director or directors, then the operation of this condition 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. The Board will monitor the Trust for the existence of any material irreconcilable conflict between and among the interests of the variable annuity and variable life insurance contract owners investing in the Separate Accounts and in Portfolios of the Trust, and all other persons investing in the Portfolios, including Qualified Plans, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities: (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and the trustees of a Qualified Plan that does not provide voting rights to its investors (or Qualified Plan participants if they have the right to give instructions under the Qualified Plan governing documents); (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners and (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of plan participants.

3. In the event that a Qualified Plan ever should become an owner of 10 percent or more of the assets of a Portfolio of the Trust, Applicants will require the Qualified Plan to execute a participation agreement with the Trust that provides appropriate protection consistent with the representations in the Application. In connection with the initial purchase of Trust shares, the Qualified Plan shareholder will be required to acknowledge this condition in its application to purchase the shares.

4. Participating Insurance Companies, the responsible advisors, and any Qualified Plan that executes a Trust participation agreement upon becoming an owner of 10% or more of the assets of a Portfolio of the Trust (collectively, the ''Participating Entities'') will report any potential or existing conflicts to the Board. Participating Entities will be responsible for assisting the board in carrying out its responsibilities by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Participating Entity to inform the Board whenever Plan Participant voting instructions are disregarded. The responsibility to report such information and any conflicts to the Board and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in the Trust; those responsibilities will be carried out with a view only to the interests of the contract owners and participants under the Qualified Plans.

5. If it is determined by a majority of the Board, or a majority of the disinterested members of the Board, that a material irreconcilable conflict exists, then the relevant Participating Insurance Companies and Qualified Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors, as the case may be), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the affected Portfolio of the Trust and reinvesting such assets in a different investment medium, including another Portfolio, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity contract owners or variable life insurance contract owners of one or

more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Portfolio of the Trust and reinvesting such assets in a different investment medium, including another Portfolio of the Trust; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the Trust's election, to withdraw the Participating Insurance Company's Separate Account's investment in the Trust and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and all Qualified Plans under their agreements governing participation in the Trust and those responsibilities will be carried out with a view only to the interests of contract owners and participants in the Qualified Plans.

For purposes of this Condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will the Trust or its investment advisor be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by this Condition 5 to establish a new funding medium for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan will be required by this Condition 5 to establish a new funding medium for such Qualified Plan if (a) an offer to do so has been declined by vote of a majority of plan participants materially and adversely affected by the irreconcilable material conflict or (b) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan makes such decision without a plan participant vote.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known in writing promptly to all Participating Entities.

7. Participating Insurance Companies will provide pass-through voting privileges to all owners of Variable Contracts so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable annuity and variable life insurance owners. As to variable annuity and variable life insurance contracts that participate in a Portfolio through unregistered separate accounts, pass-through voting privileges will be extended to the owners of such contracts to the extent granted by the issuing insurance company. Participating Insurance Companies will be responsible for assuring that each of their registered Separate Accounts participating in a Portfolio calculate 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 will be a contractual obligation of Participating Insurance Companies under their agreements governing participation in a Portfolio. Each Participating Insurance Company will vote Trust shares held by a Separate Account 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. Each Qualified Plan will vote in accordance with applicable law and governing plan documents.

8. The Trust 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 Trust) and, in particular, the Trust 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 Trust is not one of the trusts described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Trust 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 promulgate with respect thereto.

9. The Trust will disclose in its prospectus that (a) the Trust is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies and for certain qualified pension and retirement plans, (b) material irreconcilable conflicts possibly could arise, and (c) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict. The Trust will notify all Participating Insurance Companies and Qualified Plans that similar disclosure may be appropriate in Separate Account prospectuses and Qualified Plan disclosure documents.

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

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

12. Each Participating Insurance Company will maintain at its home office available to the Commission a list of its officers, directors and employees who participate directly in the management and administration of any separate account organized as a Unit Investment Trust of any Fund. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

13. No less often than annually, each Participating Insurance Company, Qualified Plan, and/or the investment advisor will submit to the Boards such reports, materials or data as each Board may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the application. These reports, materials, and data will be submitted more frequently if deemed appropriate by the relevant Board. The obligations of a Participating Insurance Company, Qualified Plan, and/or

investment advisor to provide these reports, materials and data to the Boards will be contractual obligations of each Participating Insurance Company, Qualified Plan, and investment advisor under the participation agreements.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2603 Filed 2–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23672]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 29, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January, 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant 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 23, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, N.W., Washington, DC 20549.

Old Mutual Equity Growth Assets South Africa Fund [File No. 811–9136]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant's portfolio consisted solely of its beneficial interest in Old Mutual South Africa Equity Trust. On September 18, 1998, all remaining shareholders of applicant redeemed their shares at net asset value. Expenses incurred in connection with the liquidation totaled approximately $40,000, and were paid by Old Mutual Fund Holdings (Bermuda) Limited.

Filing Dates: The application was filed on September 29, 1998, and amended on December 17, 1998.

Applicant's Address: Washington Mall Phase II, 4th Floor, 22 Church Street, Hamilton HM11, Bermuda.

Hyperion 1997 Term Trust, Inc. [File No. 811–7072]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 1, 1997, applicant made a liquidating distribution of substantially all of its assets to shareholders at net asset value. At the time of filing the application, applicant had 151 registered shareholder accounts that had not surrendered their shares. Applicant's former custodian, State Street Bank & Trust Company, is holding funds representing the aggregate liquidation value of applicant's remaining shares. Expenses incurred in connection with the liquidation totaled approximately $1,666,650, of which applicant bore $1,614,789, and applicant's investment adviser bore the remaining $51,861.

Filing Dates: The application was filed on October 21, 1998, and amended on December 29, 1998.

Applicant's Address: One Liberty Plaza, 165 Broadway, New York, New York 10006.

New York Life Fund, Inc. [File No. 811–1998]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Except for shares issued to New York Life Insurance Company (''New York Life''), the Registrant's parent company and initial shareholder, Applicant's shares were held solely by New York Life Separate Accounts N and Q (''Separate Accounts N and Q''), as an investment vehicle for variable annuity contracts issued by New York Life. In May 1995, New York Life commenced a redemption program offering contract holders of the individual variable annuity contracts issued by New York Life, through Separate Accounts N and Q, an option to either surrender their contracts for the accumulated cash value or exchange their contracts for a fixed or variable annuity product offered by New York Life Insurance and Annuity Corporation, a wholly owned subsidiary of New York Life. As of November 17, 1997, all of the contract holders had, pursuant to the redemption offer, either surrendered or exchange their contracts. All legal, accounting and other expenses incurred in connection with the liquidation have been or will be borne by New York Life or a subsidiary thereof.

Filing Dates: The application was filed on November 10, 1998 and amended on January 15, 1998.

Appplicant's Address: 51 Madison Avenue, New York, NY 10010.

New York Life Separate Account N [File No. 811–1999]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. In May 1995, New York Life Insurance Company (''New York Life'') commenced a redemption program offering contract holders of the individual variable annuity contracts issued by New York Life through the Applicant an option to either surrender their contract for the accumulated cash value or exchange their contract for a fixed or variable annuity product offered by New York Life Insurance and Annuity Corporation, a wholly owned subsidiary of New York Life. As of November 17, 1997, all of the contract holders had, pursuant to the redemption offer, either surrendered or exchanged their contracts. All legal, accounting, and other expenses incurred in connection with the liquidation have been or will be borne by New York Life or a subsidiary thereof.

Filing Date: The application was filed on November 10, 1998.

Applicant's Address: 51 Madison Avenue, New York, NY 10010.

New York Life Separate Account Q [File No. 811–2000]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. In May 1995, New York Life Insurance Company (''New York Life'') commenced a redemption program offering contract holders of the individual variable annuity contracts issued by New York Life through the Applicant an option to either surrender their contract for the accumulated cash value or exchange their contract for a fixed or variable annuity product offered by New York Life Insurance and Annuity Corporation, a wholly owned subsidiary of New York Life. As of November 17, 1997, all of the contract holders had, pursuant to the redemption offer, either surrendered or exchanged their contracts. All legal, accounting, and other expenses incurred in connection with the liquidation have been or will be borne by New York Life or a subsidiary thereof.