of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associated Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW, Washington, DC 20549.

Dated: February 10, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4115 Filed 2–18–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

Extension: Rule 24 [17 CFR 250.24], SEC File No. 270–129, OMB Control No. 3235–0126

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit to the Office of management and Budget (''OMB'') a request for an extension of the previously OMB approved rule 24 under the Public Utility Holding Company Act of 1935 (15 U.S.C. Section 79a et seq.) (''Act'').

Rule 24 under the Act requires the filing with the Commission of certain information indicating that an authorized transaction has been carried out in accordance with the terms and conditions of the Commission order authorizing the transaction. The Commission needs the information under rule 24 to ensure that the terms and conditions of its orders are being complied with, and the Commission uses the information to ensure appropriate compliance with the Act. The respondents are comprised of two groups of entities: (a) registered holding companies under the Act and their direct and indirect subsidiaries and affiliates; and (b) holding companies exempt from the provisions of the Act by rule or order from all provisions of the Act, except section 9(a)(2). It is estimated that the total number of respondents is 134, and the average number of responses per respondent is 2.4 responses annually. The Commission estimates that the total annual reporting burden under rule 24 is 636 hours (*e.g.*, 318 filings × 2 hours = 636 burden hours).

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. There is no requirement to keep the information in the forms confidential because it is public information.

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: February 10, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4119 Filed 2–18–99; 8:45 am]

BILLING CODE 3010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23693; File No. 812–11230]

Conseco Series Trust, et. al: Notice of Application

Februry 12, 1999.

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

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (''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 permit shares of any current or future series of Conseco Series Trust and shares of any future fund that is designed to fund variable insurance products and for which Conseco Capital Management, Inc. (''Conseco''), or any of its affiliates, serves, now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (''Fund'') to be offered and sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts (''Variable Contracts'') issued by both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

APPLICANTS: Conseco Series Trust and Conseco Capital Management, Inc.

FILING DATES: The application was filed on July 28, 1998, and an amended and restated application was filed on December 11, 1998.

HEARING OR NOTIFICATION OF HEARING: An order (''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 March 9, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o William P. Latimer, Esq., Senior Counsel, Conseco Capital Management, Inc., 11825 North Pennsylvania Street, Carmel, Indiana 46032.

FOR FURTHER INFORMATION CONTACT: Laura A Novack, Senior Attorney, or Kevin M. Kirchoff, 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 completer application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Conseco Series Trust was organized as a business trust under the laws of the Commonwealth of Massachusetts by

Declaration of Trust dated November 15, 1982, and commenced operations as a registered open-end management investment company on October 19, 1983. Conseco Series Trust currently consists of five separately managed series, each with its own investment objective and policies. Additional series could be added in the future.

2. Conseco is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as Conseco Series Trust's investment adviser. Conseco is a wholly-owned asset management subsidiary of Conseco, Inc., a publicly-owned financial services company, whose principal operations are in development, marketing, and administration of specialized annuity, life and health insurance products.

3. Conseco Series Trust currently offers its shares to insurance companies as the investment vehicle for their separate accounts that fund variable annuity contracts. Applicants propose that shares of each series be offered to affiliated and unaffiliated insurance companies for their separate accounts as the investment vehicle to fund either variable annuity or variable life insurance contracts. Separate accounts owning shares of the Fund and their insurance company depositors are referred to herein as ''Participating Separate Accounts'' and ''Participating Insurance Companies,'' respectively.

4. The Participating Insurance Companies will establish their own Participating Separate Accounts and design their own Variable Contracts. Each Variable Contract will have certain unique features and will probably differ from other Variable Contracts supported by the Fund with respect to insurance guarantees, premium structure, charges, options' distribution method, marketing techniques, sales literature and other aspects. Each Participating Insurance Company will enter into a participation agreement with the Fund on behalf of its Participating Separate Account, and will have the legal obligation of satisfying all applicable requirements under state and federal law. The role of the Fund, so far as the federal securities laws are applicable, will be limited to that of offering its shares to separate accounts of various insurance companies and fulfilling any conditions the Commission may impose upon granting the Order requested herein.

5. Applicants state that shares of each series of the Fund also may be offered directly to Qualified Plans outside of the separate account context. The Plans will be pension or retirement plans intended to qualify under Sections 401(a) and 501(c) of the Internal Revenue Code of 1986, as amended (''Code''). Many of the Plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under Section 401(k) of the Code. The Plans also will be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974 (''ERISA'') applicable to either defined benefit or to defined contribution profit-sharing plans, specifically ''Title I—Protection of Employee Benefit Rights.'' Applicants assert that the Plans therefore will be subject to regulatory provisions under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility and enforcement.

6. Qualified Plans may choose the Fund (or any series thereof) as their sole investment or as one of several investments. Plan participants may or may not be given an investment choice depending on the Plan itself. Shares of the Fund sold to such Qualified Plans would be held by the trustee(s) of the Plans as mandated by Section 403(a) of ERISA. Conseco will not act as investment adviser to any of the Qualified Plans that will purchase shares of the Fund. There will be no pass-through voting to the participants in such Qualified Plans.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act exempting scheduled and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, sub-adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and subparagraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold to variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies and to Qualified Plans.

2. 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, 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 granted to a separate account by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company. Therefore, 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 investment company that also offers its shares to a variable annuity or flexible premium variable life insurance account of the same company or of an affiliated or unaffiliated 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 of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.''

3. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' Moreover, the relief under Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying investment company that also offers its shares to Plans. The use of a common investment company as the underlying investment medium for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies and qualified Plans is referred to as ''extended mixed and shared funding.''

4. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of 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 premium variable life insurance 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. Thus, Rule 6e–3(T) permits mixed funding, but precludes shared funding or selling shares to Plans.

5. Applicants state that the current tax law permits the Fund to increase its asset base through the sale of shares to Plans. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of the separate accounts funding the Variable Contracts. The Code provides that the Variable Contracts will not be treated as annuity contracts or life insurance contracts for any period in which the underlying assets are not adequately diversified in accordance with regulations issued by the Treasury Department. The regulations generally provide that to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which permits shares of an investment company to be held by trustees of a Qualified 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). As a result, applicants assert that Qualified Plans may select the Fund as an investment option without endangering the tax status of Variable Contracts issued through Participating Insurance Companies.

6. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of these Treasury regulations. Applicants assert that the sale of shares of the same underlying 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. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as an 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)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

8. Applicants state that the partial relief from Section 9(a) found in sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T), 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 that section. Applicants state that the exemptions recognize that it is not necessary to apply the provisions of Section 9(a) to the many individuals who may be involved in a large insurance company, but who have no connection with the investment company, or any series thereof, funding the separate accounts. Applicants note that the Participating Insurance Companies will not be involved in the management or administration of the Fund. Therefore, applicants assert that applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants state that applying such restrictions would increase the monitoring costs incurred by the Participating Insurance Companies and therefore, would reduce the net rates of return realized by Variable Contract owners. Moreover, applicants state that the appropriateness of the relief requested will not be affected by the proposed sale of shares of the Fund to Qualified Plans, because the insulation of the Fund from those individuals who are disqualified under the 1940 Act remains in place. Applicants submit that applying the requirements of Section 9(a) because of investment by Qualified Plans would be unjustified and would not serve any regulatory purpose. Moreover, since the Plans are not investment companies and will not be deemed affiliated solely by virtue of their shareholdings, no additional relief is necessary.

9. Subparagraph (b)(15)(iii) of rules 6e–2 and 6e–3(T) under the 1940 Act assumes that contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a related separate account. Applicants state that pass-through voting privileges will be provided for Variable Contract owners as long as the Commission interprets the 1940 Act to require such privileges to be provided.

10. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides exemptions from the pass-through voting requirements in limited situations. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides that an insurance company may disregard the voting instructions of its contract owners with respect to the investment of an underlying investment company or any contract between an investment company and its investment adviser, when an insurance regulatory authority so requires. In addition, an insurance company may disregard the voting instructions of its contract owners if the contract owners initiate certain changes in the investment company's investment policies, principal underwriter, or investment adviser. Voting instructions with respect to a change in investment policies may be disregarded only if the insurance company makes a good faith determination that such change would: (a) violate state law; (b) result in investments that were not consistent with the investment objectives of the separate account; or (c) result in investments that would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in the principal underwriter may be disapproved if such disapproval is reasonable. Voting instructions with respect to a change in an investment adviser may be disregarded only if the insurance company makes a good faith determination that: (a) the adviser's fee would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser; or (c) the proposed adviser may be expected to manage the investment company's investments in a manner that would be inconsistent with its investment objectives or in a manner that would result in investments that vary from certain standards.

11. Applicants state that Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts and are subject to extensive state regulation of insurance. Applicants maintain, therefore, that in adopting Rule 6e–2, the Commission recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers or principal underwriters. Applicants also state that the Commission expressly recognized that state insurance regulators have authority to require an insurance company to draw from its general account to cover costs imposed upon the insurance company by a change approved by contract owners over the insurance company's objections.

Therefore, the Commission deemed exemptions from pass-through voting requirements necessary ''to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority, and therefore, the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) presumably were adopted in recognition of the same considerations the Commission applied in adopting Rule 6e–2. Applicants submit that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding, and that such funding does not compromise the goals of the insurance regulatory authorities or of the Commission.

12. Applicants further state that the Fund's sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. As previously noted, shares of the Fund will be held by the trustees of the Plans as required by Section 403(a) of ERISA. Section 403(a) provides that the trustees must have exclusive authority and discretion to manage and control a Plan with two exceptions: (a) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of 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, 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 the named fiduciary. Accordingly, applicants submit 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 respect to Qualified Plans since such Plans are not entitled to pass-through voting privileges.

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

14. Applicants generally expect many Qualified Plans to have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plan in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser(s) or another named fiduciary to exercise voting rights in accordance with instructions from participants. Applicants submit that where a Qualified Plan does not provide participants with the right to give voting instructions, there is no potential for material irreconcilable conflicts of interest between or among contract owners and Plan investors with respect to voting of the Fund's shares. Applicants further submit that where a Plan does provide participants with the right to give voting instructions, they see no reason to believe that participants in Qualified Plans generally, or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage contract owners. The purchase of shares of the Fund by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed and shared funding.

15. Applicants state that no increased conflicts of interest would be presented by the granting of the request 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 states. Applicants note that where different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different or greater than exists where a single insurer and its affiliates offer their insurance products in several states.

16. Applicants further submit that affiliation does not reduce the potential for differences in 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 Participating Separate Account's investment in the Fund.

17. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard contract owner voting instructions. Potential disagreement is limited by the requirement that disregarding voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner voting 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 Fund, to withdraw its separate account's investment in the Fund. No charge or penalty will be imposed as a result of such a withdrawal.

18. Applicants submit that there is no reason why the investment policies of the Fund with mixed funding would, or should, be materially different from what those policies would, or should, be if the Fund supported only variable annuity or only variable life insurance contracts. Hence, applicants state, there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, applicants represent that the Fund will not be managed to favor or disfavor any particular insurer or type of contract.

19. As noted above, Section 817(h) of the Code imposes certain diversification standards on the assets underlying the Variable Contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii), which establishes diversification requirements for such portfolios, specifically permits, among other

things, ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, applicants assert that neither the Code, the Treasury regulations, nor the revenue rulings thereunder, recognize or proscribe any inherent conflict of interest if Qualified Plans, variable annuity separate accounts, and variable life separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Participating Separate Account or a Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account or Plan will redeem shares of the Fund at their net asset value in conformity with Rule 22c–1 under the 1940 Act to provide proceeds to meet distribution needs. The Qualified Plan will then make distributions in accordance with the terms of the Plan. The life insurance company will surrender values from the Separate Account into the general account to make distributions in accordance with the terms of the Variable Contract.

21. Applicants state that the sale of shares to Plans should not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants submit that there should be very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

22. Applicants also state that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contract owners and to Qualified Plans. The transfer agent for the Fund will inform each Participating Insurance Company of each Participating Separate Account's share ownership in the Fund, as well as inform the trustees of Qualified Plans of their holdings. The Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Fund would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

23. Applicants submit that the ability of the Fund 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, with respect to any contract owner as opposed to a Qualified Plan participant. Regardless of the rights and benefits of Qualified Plan participants or contract owners, the Qualified Plans and the Participating Separate Accounts only have rights with respect to their respective shares of the Fund. No shareholder of any of the Fund has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

24. Applicants state that there are no conflicts between the contract owners of Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that shareholders may not all agree with a particular proposal. While interests and opinions of shareholders may differ, however, this does not mean that there are any inherent conflicts of interest between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Qualified Plans can make the decision quickly and redeem their shares of the Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts, or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, applicants represent that even should the interests of contract owners and the interests of qualified Plans conflict, the conflicts can be resolved almost immediately because the trustees of the Qualified Plans can, independently, redeem shares out of the Fund.

25. Applicants also assert that there does not appear to be any greater potential for material irreconcilable conflicts arising between the interests of Qualified Plan participants and contract owners of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity and variable life insurance contract owners.

26. Applicants believe that the discussion contained herein demonstrates that the sale of shares of the Fund to Qualified Plans and Variable Contracts does not increase the risk of material irreconcilable conflicts of interest. Furthermore, applicants state that the use of the Fund with respect to variable life insurance contracts and Qualified Plans is not substantially different from the Fund's current use, in that variable insurance contracts and Qualified Plans, like variable annuity contracts, are generally long-term retirement vehicles. In addition, applicants assert that regardless of the type of shareholder in the Fund, Conseco is or would be contractually or otherwise obligated to manage each series of the Fund solely and exclusively in accordance with that series' investment objectives, policies and restrictions as well as any guidelines established by the Fund's Board for Trustees.

27. Applicants assert that various factors have prevented more insurance companies from offering variable annuity and variable life insurance contracts than currently do so. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management, and the lack of public name recognition as investment professionals. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own. Applicants assert that use of the Fund as a common investment medium for Variable Contracts would ameliorate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of Conseco and its affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants submit that therefore, making the Fund available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts. Applicants claim that this should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges. Moreover, the sale of the shares of the Fund to Qualified Plans should further increase the amount of assets available for investment by the Fund. This in turn, should inure to the benefit of contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new portfolios to the Fund more feasible.

28. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding and sales of Fund shares to Qualified Plans.

Applicants' Conditions

Appliants have consented to the following conditions:

1. A majority of the Board of Trustees of the Fund (''Board'') will consist of persons who are not ''interested persons'' of the Fund, 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 Trustees, 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 Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all Participating Separate Accounts and of the participants in Qualified Plans investing in the Fund 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 interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of its participants.

3. Participating Insurance Companies, Conseco, or any other investment adviser of the Fund, and any Qualified Plans that execute a fund participation agreement upon becoming an owner of 10% or more of the Fund's assets (''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the 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 of each Participating Insurance Company to inform the Board whenever it has determined to disregard contract owner voting instructions and, when pass-through voting is applicable, an obligation of each Plan to inform the Board whenever it has determined to disregard voting instructions from Plan participants. The responsibilities to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies and Plans under their agreements governing participation in the Fund, and such agreements shall provide, in the case of Participating Insurance Companies, that these responsibilities will be carried out with a view only to the interests of contract owners, and in the case of Qualified Plans, that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested Trustees, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the Participating Separate Accounts from the Fund or any series thereof, and reinvesting such assets in a different investment medium, which may include another series of the Fund, or submitting the question of whether such reinvestment 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; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owners' voting instruction, and that decision represents a minority position or would preclude a majority vote, then that insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the Fund's election, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of material irreconcilable conflict and bearing the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants, respectively.

5. For purposes of Condition 4, a majority of the disinterested Trustees will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or Conseco be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract if an offer to do so has been declined by vote of a majority of contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by Condition 4 to establish a new funding medium for the 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 material irreconcilable conflict; or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without a vote of its participants.

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

7. Participating Insurance Companies will provide pass-through voting privileges to contract owners who invest in Participating Separate Accounts so long as the Commission interprets the 1940 Act to require pass-through voting

for contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Fund held in their Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of their Participating Separate Accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Participating Separate Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions.

8. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

9. All reports of potential or existing conflicts received by a Board, 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 Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. The Fund will notify all Participants that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Fund will disclose in its prospectus that: (a) The Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for Plans; (b) due to differences of tax treatment and other considerations, the interests of various contract owners participaing in the Fund and the interest of Qualified Plans investing in the Fund may conflict; and (c) the Board will nomitor for the existence of any material conflicts and determine what action, if any, should be taken.

11. The 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 shares of the Fund), and, in particular, the 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(a), and, if applicable, Section 16(b) of the 1940 Act. Further, the 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.

12. 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 or shared funding on terms and conditions materially different from any exemptions grated in the order requested by Applicants, then the fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, or Rule 6e-3, as adopted, to the extent applicable.

13. No less than annually, the Participants shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board when it so reasonably requests shall be a contractual obligation of all Participants under the agreements governing their participation in the Fund.

14. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of the Fund, such Qualified Plan will execute a participation agreement with the Fund which includes the conditions set forth herein, to the extent applicable. A qualified plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41049; File No. SR–CSE–98–03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Regarding Regulatory Cooperation

February 11, 1999.

I. Introduction

On October 26, 1998, the Cincinnati Stock Exchange, Inc. (''CSC'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] In its proposal, the CSE seeks to amend its disciplinary rules to provide for regulatory cooperation by Exchange members in connection with actions initiated by other self-regulatory organizations (''SROs''). Notice of the proposal was published in the **Federal Register** on December 18, 1998.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to amend Rule 8.2 by adding subsections (f) and (g). Subsection (f) would require members, member organizations, persons associated with a member or member organization, and other persons or entities over whom the Exchange has jurisdiction to testify before another SRO and to furnish information in connection with a regulatory inquiry, investigation, examination, or disciplinary proceeding resulting from an agreement entered into by the Exchange pursuant to subsection (g). Further, subsection (f) would require these persons and entities not to impede such a proceeding. In addition, the new subsection (g) provides that the Exchange may enter into agreements with domestic and foreign SROs providing for the exchange of information and other forms of mutual

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40782 (Dec. 11, 1998), 63 FR 70172.