

(CRDA) is the design basis accident for the subject TS changes. In order to minimize the impact of a CRDA, the BPWS process was developed to minimize control rod reactivity worth for BWR plants. The proposed improved BPWS further simplifies the control rod insertion process and, in order to evaluate it, the staff followed the guidelines of Standard Review Plan Section 15.4.9, and referred to General Design Criterion 28 of Appendix A to 10 CFR part 50 as its regulatory requirement. The TSTF stated the improved BPWS provides the following benefits: (1) Allows the plant to reach the all-roads-in condition prior to significant reactor cool down, which reduces the potential for re-criticality as the reactor cools down; (2) reduces the potential for an operator reactivity control error by reducing the total number of control rod manipulations; (3) minimizes the need for manual scrams during plant shutdowns, resulting in less wear on control rod drive (CRD) system components and CRD mechanisms; and, (4) eliminates unnecessary control rod manipulations at low power, resulting in less wear on reactor manual control and CRD system components. The addition of procedural requirements and verifications specified in NEDO-33091-A, along with the proper use of the BPWS will prevent a control rod drop accident (CRDA) from occurring while power is below the low power setpoint (LPSP). The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 2006.

For the Nuclear Regulatory Commission,  
Project Manager, Plant Licensing Branch [ ],  
Division of Operating Reactor Licensing,  
Office of Nuclear Reactor Regulation.

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-27306; File No. 812-13188]

### The Variable Annuity Life Insurance Company, et al., Notice of Application

April 27, 2006.

**AGENCY:** Securities and Exchange Commission (the "Commission").

**ACTION:** Notice of application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the "Act"), and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

*Applicants:* The Variable Annuity Life Insurance Company ("VALIC"), VALIC

Separate Account A ("Separate Account A" and, collectively with VALIC, the "Applicants"), and VALIC Company I ("VALIC I" and, collectively with VALIC and Separate Account A, the "Section 17 Applicants").

*Summary of Application:* Applicants seek an order approving the proposed substitution of shares of Evergreen Fundamental Large Cap Fund with Large Cap Core Fund; Evergreen Equity Income Fund with Broad Cap Value Fund; American Century Ultra Fund with VALIC Ultra Fund; AIM Large Cap Growth Fund, Janus Fund and Putnam New Opportunities Fund with Large Capital Growth Fund; MSIF Mid Cap Growth Fund, Putnam OTC & Emerging Growth Fund and SIT Mid Cap Growth Fund with Mid Cap Strategic Growth Fund; Evergreen Special Values Fund with Small Cap Special Values Fund; SIT Small Cap Growth Fund and Evergreen Special Equity Fund with Small Cap Strategic Growth Fund; Credit Suisse Small Cap Growth Fund with Small Cap Aggressive Growth Fund; Janus Adviser Worldwide Fund and Putnam Global Equity Fund with Global Equity Fund; Templeton Global Asset Allocation Fund with Global Strategy Fund; Templeton Foreign Fund with Foreign Value Fund; and Dreyfus Basic U.S. Mortgage Securities Fund with Capital Conservation Fund (the "Substitution"). Section 17 Applicants seek an order pursuant to Section 17(b) of the Act to permit certain in-kind transactions in connection with the Substitution.

*Filing Date:* The application was originally filed on May 6, 2005, and an amended and restated application was filed on April 26, 2006.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission 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 May 22, 2006, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

Applicants, 2929 Allen Parkway, Houston, Texas 77019.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Marquigny, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551-6795.

**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 Commission, 100 F Street, NE., Washington, DC 20549 (202-551-8090).

### Applicants' and Section 17 Applicants' Representations

1. VALIC is a stock life insurance company originally organized in 1955 under the laws of Washington, DC and reorganized in Texas in 1968. VALIC is an indirect wholly-owned subsidiary of American International Group, Inc., a United States based international insurance and financial services organization.

2. Separate Account A was established in 1979. Separate Account A is registered under the Act as a unit investment trust (File No. 811-3240) and is used to fund variable annuity contracts (the "Contracts") (File No. 33-75292) issued by VALIC.

3. VALIC I was incorporated in Maryland on December 7, 1984 and is registered under the Act as an open-end management investment company (File Nos. 811-3738 and 002-83631).

4. Purchase payments under the Contracts may be allocated to one or more divisions ("Divisions") of Separate Account A. Income, gains and losses, whether or not realized, from assets allocated to Separate Account A are, as provided in the Contracts, credited to or charged against Separate Account A without regard to other income, gains or losses of VALIC. The assets maintained in Separate Account A will not be charged with any liabilities arising out of any other business conducted by VALIC. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of VALIC. Accordingly, Applicants represent that all of VALIC's assets are available to meet its obligations under the Contracts.

5. The Contracts permit allocations of account value to available Divisions that invest in specific investment portfolios of underlying registered investment companies (a "Fund" and, collectively, the "Mutual Funds"). VALIC I is one of the available Mutual Funds and each of the following is a series of VALIC I:

Large Cap Core Fund, Broad Cap Value Fund, VALIC Ultra Fund, Large Capital Growth Fund, Mid Cap Strategic Growth Fund, Small Cap Special Values Fund, Small Cap Strategic Growth Fund, Small Cap Aggressive Growth Fund, Global Equity Fund, Global Strategy Fund, Foreign Value Fund, and Capital Conservation Fund (collectively, the "Replacement Funds"). The other Funds involved in this application (collectively, the "Replaced Funds") are all registered under the Act as open-end management investment companies and include the following: AIM Large Cap Growth Fund, American Century Ultra Fund, Credit Suisse Small Cap Growth Fund, Dreyfus BASIC U.S. Mortgage Securities Fund, Evergreen Equity Income, Evergreen Fundamental Large Cap Fund, Evergreen Special Equity, Evergreen Special Values Funds, Janus Adviser Worldwide Funds, Janus Fund, MSIF Mid Cap Growth Portfolio, Putnam Global Equity Fund, Putnam New Opportunities Fund, Putnam OTC & Emerging Growth Fund, Sit Mid Cap Growth Fund, Sit Small Cap Growth Fund, Templeton Foreign Fund, and

Templeton Global Asset Allocation Fund.

6. The Contracts permit transfers of accumulation value from one Division to another Division at any time prior to annuitization, subject to certain restrictions. No sales charge applies to such a transfer of accumulation value among Divisions.

7. The Contracts reserve the right, upon notice to contract owners (the "Contract Owners"), to substitute shares of another mutual fund for shares of a Fund held by a Division.

8. The Replaced Funds involved in the Substitution include 18 separate portfolios representing ten investment company complexes. After the Substitution, there will be 12 portfolios, all of which will be portfolios of VALIC I. Applicants represent that the investment objective and policies of each Replacement Fund will be the same as or substantially similar to the investment objective and policies of the corresponding Replaced Fund. Applicants state that the Substitution is being proposed to reduce the number of overlapping portfolio offerings in

certain classes and eliminate certain portfolios whose performance levels in the recent years have not maintained the level of performance that was the basis of their inclusion as variable account options. Applicants represent that relieving Separate Account A of the administrative burdens of interfacing with ten unaffiliated investment company complexes is expected to simplify compliance, accounting and auditing and, generally, to allow VALIC to administer the Contracts more efficiently. Applicants state that VALIC will serve as the investment adviser for each Replacement Fund, and many of the Replacement Funds will retain as sub-adviser the investment adviser of the Replaced Fund. Applicants state that, because VALIC I has "manager of managers" exemptive relief, VALIC, as investment adviser, will be able to act more quickly and efficiently, subject to Board of Directors approval, to protect Contract Owners' interests if the performance of one or more of the sub-advisers does not meet expectations.<sup>1</sup>

9. Applicants propose the following substitutions of shares:

Substitution	Replaced portfolio	Replacement portfolio
A .....	Evergreen Fundamental Large Cap Fund .....	Large Cap Core Fund.
B .....	Evergreen Equity Income Fund .....	Broad Cap Value Fund.
C .....	American Century Ultra Fund .....	VALIC Ultra Fund.
D .....	AIM Large Cap Growth .....	Large Capital Growth Fund.
E .....	Janus Fund.	
F .....	Putnam New Opportunities Fund.	
G .....	MSIF Mid Cap Growth Fund .....	Mid Cap Strategic Growth Fund.
H .....	Putnam OTC & Emerging Growth Fund.	
I .....	SIT Mid Cap Growth Fund.	
J .....	Evergreen Special Values Fund .....	Small Cap Special Values Fund.
K .....	SIT Small Cap Growth Fund .....	Small Cap Strategic Growth Fund.
L .....	Evergreen Special Equity Fund.	
M .....	Credit Suisse Small Cap Growth Fund .....	Small Cap Aggressive Growth Fund.
N .....	Janus Adviser Worldwide Fund .....	Global Equity Fund.
O .....	Putnam Global Equity Fund.	
P .....	Templeton Global Asset Allocation Fund .....	Global Strategy Fund.
Q .....	Templeton Foreign Fund .....	Foreign Value Fund.
R .....	Dreyfus Basic U.S. Mortgage Securities Fund .....	Capital Conservation Fund.

10. *Substitution A:* Applicants describe the investment objective for the Evergreen Fundamental Large Cap Fund and the Large Cap Core Fund identically. Each Fund invests, under normal conditions, at least 80% of its assets in the common stock of large U.S. companies. Each Fund's stock selection is based on a diversified style of equity management that allows it to invest in both value and growth oriented equity securities. Applicants represent that both the Replaced Fund and the Replacement Fund have similar

investment strategies and have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.61%, 12b-1 Fees of 0.30%, and Other Expenses of 0.59%.<sup>2</sup> Charges for the Replacement Fund include: Management Fees of 0.70% and Other Expenses of 0.15%; it does not charge a 12b-1 Fee. Respectively, the Replaced Fund's total gross and net operating expenses are 1.50% and 1.39% (reflecting a 0.11% fee reduction arrangement). Both total gross and net

annual operating expenses for the Replacement Fund equal 0.85%. Under the Contracts, both Funds' Separate Account fee is the same. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the two Funds are nearly identical; and (2) the Replacement Fund assets will be managed by the same investment adviser (using the same management style and strategy) as the Replaced Fund.

<sup>1</sup> Investment Company Act Release Nos. 23386 (Aug. 12, 1998) (Notice) and 23429 (Sept. 9, 1998) (Order).

<sup>2</sup> For the descriptions of charges involved in the Substitution, all percentages for the Management Fees, 12b-1 Fees, Other Expenses, Fee Reductions,

Total Gross and Net Annual Operating Expenses, and Separate Account Fees represent a percentage of average annual assets.

11. *Substitution B:* Applicants state that the Evergreen Equity Income Fund seeks current income and capital growth by investing primarily in equity securities across all market capitalizations that on the purchase date pay a higher yield than the average yield of companies included in the Russell 1000 Value Index. Applicants represent that the Broad Cap Value Fund seeks total return through capital appreciation with income as a secondary consideration. The Replacement Fund invests primarily in large capitalization companies whose stocks are considered to be undervalued. The Replacement Fund may also invest in companies with mid-sized or small market capitalizations and may invest up to 20% in foreign securities. Applicants state that the investment strategies of the funds differ such that the Replaced Fund invests in "growth" and "value" securities whereas the Replacement Fund invests in what it determines are "value" securities. However, Applicants also represent that notwithstanding these differences, the risk profile of the two funds is very similar.

Charges for the Replaced Fund include Management Fees of 0.59%, 12b-1 Fees of 0.30%, and Other Expenses of 0.34%. Charges for the Replacement Fund include Management Fees of 0.70%, and Other Expenses of 0.15%. The Replacement Fund does not charge a 12b-1 Fee. There is no fee reduction arrangement applicable to either Fund. The total gross annual operating expenses for the Replaced and Replacement Funds are 1.23% and 0.85%, respectively. Under the Contracts, the Separate Account fee is the same for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective (current income and capital growth) and policies of the two Funds are substantially similar; (2) the income yield of the Replacement Fund has been comparable to the Replaced Fund for the past five years, and (3) the Replacement Fund's overall risk profile is very similar to that of the Replaced Fund.

13. *Substitution C:* Applicants state that the Replaced Fund seeks long-term capital growth through investments primarily in common stocks that are considered to have a greater-than-average chance to increase in value over time. Applicants represent that the Replacement Fund seeks long term capital growth by investing primarily in common stocks of growing companies using a strategy that looks for companies with earnings and revenues that are growing at a successively faster or

accelerating pace. Applicants represent that the Replaced and Replacement Funds have no significant risk disparities and have nearly identical investment strategies.

Charges for the Replaced Fund include only a Management Fees of 0.99%; there are no 12b-1 Fees or Other Expenses. The Replacement Fund charges Management Fees of 0.80% and Other Expenses of 0.15%; there are no 12b-1 Fees. There is no fee reduction arrangement applicable to the Replaced or the Replacement Fund. The total gross annual operating expenses are for the Replaced and Replacement Funds are 0.99% and 0.95%, respectively. Under the Contracts, the Separate Account fee is 1.04% for the Replaced Fund and 1.00% for the Replacement Fund. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the two Funds are nearly identical; and (2) the Replacement Fund assets will be managed by the same investment adviser (using the same management style and strategy) as the Replaced Fund.

14. *Substitution D:* Applicants state that both Replaced and Replacement Funds seek long-term capital growth through investment in large-capitalization companies within the range of the Russell 1000 Index. Applicants also represent that (1) the Replaced and Replacement Funds have no significant risk disparities; (2) AIM serves as adviser to both funds (though as a co-subadviser for the Replacement Fund); and (3) the Funds have very similar investment strategies.

Charges for the Replaced Fund include Management Fees of 0.75%, 12b-1 Fees of 0.25%, and Other Expenses of 0.45%. As of January 18, 2006, charges for the Replacement Fund include a new reduced Management Fee of 0.64% and Other Expenses of 0.15%; it has no 12b-1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.45% and 1.37% (reflecting a 0.08% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 0.79%. Under the Contracts, both Funds' Separate Account fee is identical. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the two Funds are substantially similar; (2) the investment advisor of the Replaced Fund, AIM Advisors, will continue to serve as one of the two sub-advisers of the

Replacement Fund; and (3) in subadvising the Replacement Fund, AIM Advisors will continue using the same style and strategy as is used in managing the Replaced Fund.

15. *Substitution E:* Applicants state that the Replaced Fund seeks long-term growth of capital consistent with preservation of capital through investment in common stocks of larger, more established companies selected for their growth potential. The Replacement Fund seeks long-term growth of capital through investment in common stocks of well-established, high-quality growth companies no smaller than the smallest capitalized company included in the Russell 1000 Index. Applicants represent that the Replaced and Replacement Funds have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.64%, Other Expenses of 0.25%, and no 12b-1 Fee. As of January 18, 2006, charges for the Replacement Fund include a new reduced Management Fee of 0.64%, Other Expenses of 0.15%, and no 12b-1 Fee. Neither Replaced nor Replacement Fund has a fee reduction arrangement. Total gross annual operating expenses for Replaced and Replacement Funds are 0.89% and 0.79%, respectively. Under the Contracts, Separate Account fees for both Funds are identical. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective (long-term capital growth) and policies of the two Funds are substantially similar; and (2) both the Replaced and Replacement Fund have similar risk profiles.

16. *Substitution F:* Applicants state that the Replaced Fund seeks long-term capital appreciation by investing mainly in common stocks of U.S. companies, focusing on growth stocks in sectors of the economy the adviser believes have high growth potential. The Replacement Fund seeks long-term growth of capital through investment in common stocks of well-established, high-quality growth companies no smaller than the smallest capitalized company included in the Russell 1000 Index. Applicants represent that (1) the Replaced Fund is more likely to be subject to small and mid-cap risks than the Replacement Fund; (2) the active trading risk associated with the Replacement Fund is anticipated as a principal risk only for the Fund's first year of operations; and (3) both Funds may invest in derivatives, convertible securities and foreign securities.

Charges for the Replaced Fund include Management Fees of 0.52%,

12b-1 Fees of 0.25%, and Other Expenses of 0.35%. As of January 18, 2006, charges for the Replacement Fund include a new reduced Management Fee of 0.64%, Other Expenses of 0.15%, and no 12b-1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 1.12% and 0.79%, respectively. Under the Contracts, Separate Account fees for both Funds are identical. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective (long-term growth of capital) and policies of both Replaced and Replacement Funds are substantially similar; and (2) both the Replaced and Replacement Fund have similar risk profiles.

17. *Substitution G:* Applicants state that the Replaced and Replacement Funds each seek long-term capital growth by investing primarily in growth-oriented equity securities of U.S. mid-cap companies and, to a limited extent, foreign companies. Applicants represent that for the Replaced Fund, the market capitalization of Mid-cap companies is generally less than \$35 billion. Applicants represent that the Replacement Fund identifies a company as a mid cap company if, at the time of purchase, its capitalization is (1) within the range of companies represented in the Russell Mid Cap Growth Index, or (2) between \$1 billion and \$12 billion. Applicants represent that (1) the Replaced Fund invests up to 10% of its assets in REITs compared to the Replacement Fund which typically invests only up to 5% in REITs; (2) the active trading risk associated with the Replacement Fund is anticipated as a principal risk only for the Fund's first year of operations; and (3) both Funds may invest in derivatives and initial public offerings ("IPOs").

Charges for the Replaced Fund include Management Fees of 0.50%, 12b-1 Fees of 0.25%, and Other Expenses of 0.13%. Charges for the Replacement Fund include Management Fees of 0.70%, Other Expenses of 0.15%, and no 12b-1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 0.88% and 0.85%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of both Replaced and Replacement Funds

are substantially similar; (2) the investment adviser of the Replaced Fund, Morgan Stanley Investment Management ("MSIM"), will continue to serve as one of two sub-advisers of the Replacement Fund; and (3) MSIM will continue using the same style and strategy as is used in managing the Replaced Fund.

18. *Substitution H:* Applicants state that the Replaced Funds seeks capital appreciation by investing mainly in common stocks of U.S. companies traded in the over-the-counter market and "emerging growth" companies listed on securities exchanges, with a focus on growth stocks. Applicants state that the Replacement Fund seeks long-term capital growth by investing primarily in growth-oriented equity securities of U.S. mid-cap companies and, to a limited extent, foreign companies. Applicants represent that (1) the Replaced Fund may invest more of its assets in small-cap companies than the Replacement Fund; (2) the active trading risk associated with the Replacement Fund is anticipated as a principal risk only for that Fund's first year of operations; and (3) both Funds' overall risk profile is very similar.

Charges for the Replaced Fund include Management Fees of 0.62%, 12b-1 Fees of 0.25%, and Other Expenses of 0.54%. Charges for the Replacement Fund include Management Fees of 0.70%, Other Expenses of 0.15%, and no 12b-1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.41% and 1.40% (reflecting a 0.01% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 0.85%. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective (long-term capital growth) and policies of both Funds are substantially similar; and (2) both Replaced and Replacement Funds have similar risk profiles.

19. *Substitution I:* Applicants state that the Replaced Funds seeks long-term capital appreciation by investing in the common stocks of companies with capitalizations of \$2 billion to \$15 billion at the time of purchase. Applicants state that the Replacement Fund seeks long-term capital growth by investing primarily in growth-oriented equity securities of U.S. and, to a limited extent, foreign, mid-cap companies with market capitalization at the time of purchase is between \$1 billion and \$12 billion or within the

range of companies represented in the Russell Mid Cap Growth Index. Applicants represent that there are no significant risk disparities between the Replaced and Replacement Funds.

The Replaced Fund carries a Management Fee of 1.25%, and has no 12b-1 Fees or Other Expenses. Charges for the Replacement Fund include Management Fees of 0.70%, Other Expenses of 0.15%, and no 12b-1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.25% and 1.15% (reflecting a 0.10% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 0.85%. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of both Replaced and Replacement Funds are substantially similar; (2) although the Replaced and Replacement Funds define "mid-cap companies" slightly differently, the investment objective of both Funds is to seek long-term capital growth; and (3) both the Replaced and Replacement Fund have similar risk profiles.

20. *Substitution J:* Applicants state that the investment objective of both the Replaced and Replacement Funds is to produce capital growth by investing primarily in common stocks of small U.S. Companies. The capitalization range is identical for both Funds. Applicants represent that Replaced and Replacement Funds have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.78%, 12b-1 Fees of 0.25%, and Other Expenses of 0.34%. Charges for the Replacement Fund include Management Fees of 0.75%, Other Expenses of 0.15%, and no 12b-1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.37% and 1.32% (reflecting a 0.05% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 0.90%. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the Replaced and Replacement Funds are substantially similar; (2) the investment adviser of the Replaced Fund, Evergreen Investment Management ("EIM"), will continue to serve as one of two sub-advisers of the

Replacement Fund; and (3) EIM will continue using the same style and strategy as is used in managing the Replaced Fund.

21. *Substitution K*: Applicants state that the investment objective of the Replaced Fund is to maximize long-term capital appreciation by investing in common stocks of companies with capitalizations of \$2.5 billion or less at the time of purchase. Applicants state that the Replacement Fund seeks capital growth by investing primarily in common stocks of small U.S. companies whose market capitalization at purchase is within the range tracked by the Russell 2000 Index. Noting that only the Replacement Fund may invest in emerging market securities and IPOs, Applicants represent that the Funds have similar investment strategies and overall risk profiles.

The Replaced Fund carries a Management Fee of 1.50%, and has no 12b-1 Fees or Other Expenses. Charges for the Replacement Fund include Management Fees of 0.85%, Other Expenses of 0.15%, and no 12b-1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 1.50% and 1.00%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of both Funds are substantially similar; (2) although the Replaced and Replacement Funds define "small companies" slightly differently, the investment objective of both Funds is to seek capital growth by investing in small companies; and (3) both the Replaced and Replacement Fund have similar risk profiles.

22. *Substitution L*: Applicants state that the investment objective of both the Replaced and Replacement Funds is to produce capital growth by investing primarily in common stocks of small U.S. companies. The capitalization range is identical for both Funds. Applicants represent that the Replaced and Replacement Funds have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.89%, 12b-1 Fees of 0.30%, and Other Expenses of 0.36%. Charges for the Replacement Fund include Management Fees of 0.85%, Other Expenses of 0.15%, and no 12b-1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 1.55% and

1.00%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of both Funds are nearly identical; and (2) the Replacement Fund will be managed by the same portfolio manager (using the same management style and strategy) as the Replaced Fund.

23. *Substitution M*: Applicants state that both Replaced and Replacement Funds seek capital growth through investment in securities of small U.S. companies. Applicants describe the capitalization range for both Funds identically and represent that the Replaced and Replacement Funds are managed by the same portfolio managers and have similar investment strategies.

Charges for the Replaced Fund include Management Fees of 1.00%, 12b-1 Fees of 0.25%, and Other Expenses of 0.74%. Charges for the Replacement Fund include Management Fees of 0.85%, Other Expenses of 0.15%, and no 12b-1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.99% and 1.40% (reflecting a 0.59% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 1.00%. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of both Funds are nearly identical; and (2) the Replacement Fund will be managed by the same portfolio manager (using the same management style and strategy) as the Replaced Fund.

24. *Substitution N*: Applicants state that Replaced Fund seeks long-term growth of capital in a manner consistent with the preservation of capital by investing in common stocks of companies of any size located throughout the world. Applicants state that the Replacement Fund seeks capital appreciation by investing primarily in common stocks of mid-sized and large companies worldwide. Applicants represent that the Replacement Fund will invest mainly in developed countries but also may invest in developing markets. Applicants state that both Funds may invest in companies of any size.

Charges for the Replaced Fund include Management Fees of 0.60%, 12b-1 Fees of 0.25%, and Other

Expenses of 0.31%. Charges for the Replacement Fund include Management Fees of 0.79%, Other Expenses of 0.30%, and no 12b-1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 1.16% and 1.15% (reflecting a 0.01% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 1.09%. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective (capital appreciation by investing in common stocks of companies worldwide) and policies of both Funds are substantially similar; and (2) the Replaced and Replacement Funds have similar risk profiles.

25. *Substitution O*: Applicants state that both Replaced and Replacement Funds seek capital appreciation by investing principally in common stocks of companies worldwide and employ a strategy of investing primarily in mid-sized and large companies in developed countries. Applicants state that each Fund may invest in companies of any size and companies located in developing markets. Applicants represent that the Funds have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.67%, 12b-1 Fees of 0.25%, and Other Expenses of 0.37%. Charges for the Replacement Fund include Management Fees of 0.79%, Other Expenses of 0.30%, and no 12b-1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 1.29% and 1.00%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the Replacement Fund are nearly identical to those of the Replaced Fund; and (2) the Replacement Fund will be managed by the same portfolio manager (using the same management style and strategy) as the Replaced Fund.

26. *Substitution P*: Applicants state that the Replaced Fund seeks high total return by normally investing in equity securities of companies of any country, debt securities of companies and governments of any country, and money market instruments. Applicants state that the Replacement Fund seeks high total return by investing in equity

securities of companies in any country, fixed income (debt) securities of companies and governments of any country, and in money market instruments. Applicants also represent that the Funds have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.61% and Other Expenses of 0.24%; it has no 12b-1 Fee. Charges for the Replacement Fund include Management Fees of 0.50% and Other Expenses of 0.30%; it also has no 12b-1 Fee. Respectively, the Replaced Funds' total gross and net annual operating expenses are 0.85% and 0.84% (reflecting a 0.01% fee reduction arrangement). The Replacement Fund has no fee reduction arrangement; its total gross and net annual operating expenses are 0.80%. Under the Contracts, the Separate Account fee is 1.25% for the Replaced Fund and 1.00% for the Replacement Fund. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the Replaced and Replacement Funds are nearly identical; and (2) the Replacement Fund will be managed by the same portfolio manager (using the same management style and strategy) as the Replaced Fund.

27. *Substitution Q:* Applicants state that both the Replaced and Replacement Funds seek long-term capital growth by investing mainly in equity securities of companies located outside the U.S., including emerging markets. Applicants further represent that both Funds may invest in companies of any market capitalization, and they have no significant risk disparities.

Charges for the Replaced Fund include Management Fees of 0.61%, 12b-1 Fees of 0.25%, and Other Expenses of 0.37%. Charges for the Replacement Fund include Management Fees of 0.70% and Other Expenses of 0.30%; it has no 12b-1 Fee. There is no fee reduction arrangement applicable to either Fund. Total gross annual operating expenses for Replaced and Replacement Funds are 1.23% and 1.00%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the Replaced and Replacement Funds are nearly identical; and (2) the Replacement Fund will be managed by the same portfolio manager (using the same management style and strategy) as the Replaced Fund.

28. *Substitution R:* Applicants state that the Replaced Fund seeks as high a level of current income as is consistent with the preservation of capital and invests in mortgage-related securities issued or guaranteed by the U.S. government, its agencies or instrumentalities to achieve this objective. Applicants represent that the Replacement Fund seeks the highest possible total return consistent with the preservation of capital through current income and capital gains on investments in intermediate and long-term debt instruments and other income producing securities. Applicants state that the Replaced Fund invests more significantly in mortgage-related securities than the Replacement Fund and that the Replacement Fund may invest a larger portion of its assets in foreign securities such as U.S. dollar denominated emerging market debt.

Charges for the Replaced Fund include Management Fees of 0.60% and Other Expenses of 0.21%. Charges for the Replacement Fund include Management Fees of 0.50% and Other Expenses of 0.20%. Neither Fund has a 12b-1 Fee or a fee reduction arrangement. Total gross operating annual expenses for Replaced and Replacement Funds are 0.81% and 0.70%, respectively. Under the Contracts, the Separate Account fee is identical for both Funds. Applicants represent that the Replacement Fund is an appropriate substitute for the Replaced Fund because: (1) The investment objective and policies of the Replacement Fund are substantially similar to those of the Replaced Fund; (2) both Funds invest in fixed-income securities with a focus on current income; (3) the Replaced and Replacement Funds have similar risk profiles and similar long-term performance; and (4) considering all of VALIC's currently offered investment options, the Applicants believe that the Replacement Fund is the most appropriate substitute for the Replaced Fund because of its similarities in terms of its investment objectives, policies, media and risk.

29. Applicants represent that the Substitution will take place at the Funds' relative net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c-1 thereunder with no change in the amount of any Contract Owner's account value or death benefit or in the dollar value of his or her investment in any of the Divisions. Applicants represent that there will be no financial impact on any Contract Owner. Applicants assert that the Substitution will generally be

effected by having each of the Divisions that invests in the Replaced Funds redeem its shares at the net asset value calculated on the date of the Substitution and purchase shares of the respective Replacement Funds at the net asset value calculated on the same date.

30. Applicants represent that, in the alternative, should a Replaced Fund determine that a cash redemption would adversely affect its shareholders, it may redeem the interest "in-kind." Applicants represent that in such a case, the Substitution will be effected by the Division contributing all the securities it receives from the Replaced Fund for an amount of Replacement Fund shares equal to the fair market value of the securities contributed. Applicants assert that all in-kind redemptions from a Replaced Fund of which any of the Applicants is an affiliated person will be effected in accordance with the conditions set forth in the Commission's no-action letter issued to *Signature Financial Group, Inc.* (available December 28, 1999).

31. Applicants state that the Substitution was described in a supplement to the prospectuses for the Contracts ("Supplements") dated and filed with the Commission on March 1, 2006 and mailed to Contract Owners. Applicants represent that the Supplements provided Contract Owners with notice of the Substitution and described the reasons for engaging in the Substitution. Applicants further represent that the Supplements informed Contract Owners with assets allocated to a Division investing in the Replaced Funds that the Replaced Funds will not be an available investment option after the date of the Substitution and that Contract Owners will have the opportunity to reallocate account value:

- Prior to the Substitution, from the Divisions investing in the Replaced Funds, and
- For 30 days after the Substitution, from the Divisions investing in the Replacement Funds to Divisions investing in other Funds available under the respective Contracts, without diminishing the number of free transfers that may be made in a given contract year and without the imposition of any transfer charge or limitation, other than any applicable limitations in place to deter potentially harmful excessive trading.

32. Applicants represent that the prospectuses for the Contracts will contain the substance of the information contained in the Supplements concerning the Substitution. Applicants represent that each Contract Owner will

be provided with a prospectus for the Replacement Funds before the Substitution and that within five days after the Substitution, VALIC will send affected Contract Owners written confirmation that the Substitution has occurred and notice that Contract Owners will have the opportunity to reallocate account value for 30 days after the Substitution, from the Divisions investing in the Replacement Funds to Divisions investing in other Funds available under the respective Contracts, without diminishing the number of free transfers that may be made in a given contract year and without the imposition of any transfer charge or limitation, other than any applicable limitations in place to deter potentially harmful excessive trading.

33. Applicants state that VALIC will pay all direct and indirect expenses and transaction costs of the Substitution, including all legal, accounting and brokerage expenses relating to the Substitution, and no costs will be borne by Contract Owners. Further, Applicants represent that affected Contract Owners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Applicants under the Contracts be altered in any way. Applicants represent that (1) the Substitution will not cause the fees and charges under the Contracts currently being paid by Contract Owners, including Separate Account Fees, to be greater after the Substitution than before the Substitution; (2) the Substitution will have no adverse tax consequences to Contract Owners; and (3) the Substitution will in no way alter the tax benefits to Contract Owners.

34. Applicants believe that their request satisfies the standards for relief pursuant to Section 26(c) of the Act, as set forth below, because the affected Contract Owners will have:

(1) Account values allocated to a Division invested in a Replacement Fund with an investment objective and policies substantially similar to the investment objective and policies of the Replaced Fund; and

(2) Replacement Funds whose current total annual expenses are equal to or lower than those of the Replaced Funds for their 2005 fiscal years. In addition, VALIC has agreed that, for a period of 24 months following the Substitution, it will reimburse affected Contract Owners to the extent the expenses of a Replacement Fund exceed those of the Replaced Fund for the 2005 fiscal years.

#### **Applicants' Section 26(c) Legal Analysis**

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of

a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission may approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Applicants have reserved the right to make such a substitution under the Contracts and represent that this reserved right is disclosed in the prospectus for the Contracts.

3. Applicants represent that for all 18 Substitutions, the investment objectives and policies of the Replacement Funds are sufficiently similar to those of the corresponding Replaced Funds that Contract Owners will have reasonable continuity in investment expectations. Accordingly, Applicants believe the Replacement Funds are appropriate investment vehicles for those Contract Owners who have account values allocated to the Replaced Funds.

4. For each of the 18 Substitutions, Applicants represent that the Replacement Funds' current annual expenses are lower than the annual expenses of the corresponding Replaced Funds for their 2005 fiscal years. Applicants represent that for the 24 month period following the date of the Substitution, VALIC agrees that if, on the last day of each fiscal quarter during the 24 month period, the total operating expenses of a Replacement Fund (taking into account any expense waiver or reimbursement) exceed on an annualized basis the net expense level of the corresponding Replaced Fund for the 2005 fiscal year, it will, for each Contract outstanding on the date of the Substitution, make a corresponding reimbursement of Separate Account expenses as of the last day of such fiscal quarter, such that the amount of the Replacement Fund's net expenses, together with those of the corresponding Separate Account will, on an annualized basis, be no greater than the sum of the net expenses of the corresponding Replaced Fund and the expenses of the Separate Account for the 2005 fiscal year. Applicants also represent that VALIC agrees that, notwithstanding any higher maximum permitted Separate Account Fee disclosed in a prospectus and set forth in a variable annuity contract, the net

Separate Account Fee charged in the future to a Contract Owner on a Division that invests in a Replacement Fund will be no higher than the net Separate Account Fee charged in the most recent fiscal year to that Contract Owner on the Division that invests in the corresponding Replaced Fund. In addition, Applicants represent that for 24 months following the Substitution, VALIC will not increase contractual asset-based fees or charges for Contracts outstanding on the day of the Substitution.

5. VALIC represents that the Substitution and the selection of the Replacement Funds were not motivated by any financial consideration paid or to be paid by the Replacement Funds, their advisors or underwriters, or their respective affiliates.

6. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and represent that the Substitution is consistent with the protection of investors and the purposes fairly intended by the Act because:

(1) Each of the Replacement Funds is an appropriate fund to which to move Contract Owners with account values allocated to the Replaced Funds because the new funds have substantially similar investment objectives and policies.

(2) The direct and indirect costs of the Substitution, including any brokerage costs, will be borne by VALIC and will not be borne by Contract Owners. No charges will be assessed to effect the Substitution.

(3) The Substitution will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any Contract Owner's account value.

(4) The Substitution will not cause the fees and charges under the Contracts currently being paid by Contract Owners, including Separate Account Fees, to be greater after the Substitution than before the Substitution and will result in Contract Owners' account values being moved to a Fund with the same or lower current total annual expenses.

(5) All Contract Owners will be given notice of the Substitution prior to the Substitution and will have an opportunity beginning after such notice and until 30 days after the Substitution to reallocate account value among other available Divisions without the reallocation being counted as one of the Contract Owner's free transfers in a contract year and without the imposition of any transfer charge or limitation, other than any applicable

limitations in place to deter potentially harmful excessive trading.

(6) Within five days after the Substitution, VALIC will send to its affected Contract Owners written confirmation that the Substitution has occurred.

(7) The Substitution will in no way alter the insurance benefits to Contract Owners or the contractual obligations of VALIC.

(8) The Substitution will have no adverse tax consequences to Contract Owners and will in no way alter the tax benefits to Contract Owners.

(9) No Replacement Fund will rely on the previously granted "manager of managers" exemptive relief unless such action is approved by a majority of the Replacement Fund's shareholders at a meeting whose record date is after the Substitution has been effected.

### Section 17 Applicants' Legal Analysis

1. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principal, from knowingly purchasing any security or other property from the registered company.

2. Because shares held by Separate Account A are legally owned by VALIC, VALIC will own of record substantially all of the shares of the Replacement Funds. In addition, as investment adviser to each Replacement Fund, VALIC could be deemed to control each Replacement Fund. Therefore, each Replacement Fund could be deemed to be an affiliate of VALIC and, to the extent Separate Account A uses assets received in-kind to purchase shares of a Replacement Fund, the Substitution may be deemed to involve one or more purchases or sales of securities or property between persons who are affiliates of affiliates. Accordingly, the Section 17 Applicants are seeking relief to the extent necessary from Section 17(a) for the in-kind purchases and sales of Replacement Fund Shares.

3. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each

registered investment company concerned, as recited in its registration statement and records filed under the Act; and the proposed transaction is consistent with the general purposes of the Act.

4. The Section 17 Applicants represent that the terms of the proposed in-kind purchases of shares of the Replacement Funds by Separate Account A, including the consideration to be paid and received by each Fund involved are reasonable, fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants also represent that the proposed in-kind purchases by Separate Account A are consistent with the policies of VALIC I and the individual Replacement Funds. Finally, the Section 17 Applicants submit that the proposed substitutions are consistent with the general purposes of the Act.

5. To the extent that Separate Account A's in-kind purchases of Replacement Fund shares are deemed to involve principal transactions between entities which are affiliates of affiliates, Applicants assert that the procedures described herein should be sufficient to assure that the terms of the proposed transactions are reasonable and fair to all participants because (1) the proposed transactions will take place at relative net asset value in conformity with the requirements of Section 22(c) of the Act and Rule 22c-1 thereunder with no change in the amount of any Contract Owner's account value or death benefit or in the dollar value of his or her investment in any Division; (2) Contract Owners will not suffer any adverse tax consequences as a result of the substitutions; and (3) the fees and charges under the Contracts will not increase because of the substitutions.

6. Even though they may not rely on Rule 17a-7, the Section 17 Applicants represent that they will carry out the proposed in-kind purchases in conformity with all of the conditions of Rule 17a-7 and each Fund's procedures thereunder, except that: (1) The consideration paid for the securities being purchased or sold may not be entirely cash, and (2) the Board of Directors of VALIC I will not separately review each portfolio security purchased by the Replacement Funds. Section 17 Applicants assert that the circumstances surrounding the proposed substitutions will offer the same degree of protection to each Replacement Fund from overreaching that Rule 17a-7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, Section 17

Applicants assert that VALIC (or any of its affiliates) cannot effect the proposed transactions at a price that is disadvantageous to any of the Replacement Funds. Section 17 Applicants represent that although the transactions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a-7, and (2) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in its registration statement and as required by Rule 22c-1 under the Act. Further, Section 17 Applicants represent that no brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid to any party in connection with the proposed transactions.

7. The Section 17 Applicants assert that the sale of shares of Replacement Funds for investment securities, as contemplated by the proposed in-kind transactions, is consistent with the investment policy and restrictions of the Replacement Funds because (1) the shares are sold at their net asset value, and (2) the portfolio securities are of the type and quality that the Replacement Funds would each have acquired with the proceeds from share sales had the shares been sold for cash. To assure that the second of these conditions is met, Section 17 Applicants represent that each sub-adviser will examine the portfolio securities being offered to each Replacement Fund and accept only those securities as consideration for shares that it would have acquired for each such fund in a cash transaction.

8. Section 17 Applicants assert that the proposed in-kind transactions (1) are consistent with the general purposes of the Act as stated in the Findings and Declaration of Policy in Section I of the Act; (2) do not present any of the conditions or abuses that the Act was designed to prevent; and (3) the abuses described in Sections 1(b)(2) and (3) of the Act will not occur in connection with the proposed in-kind purchases.

### Conclusions

1. Applicants submit that for the reasons and upon the facts set forth in their application, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted.

2. Section 17 Applicants represent that the proposed in-kind transactions meet all of the requirements of Section 17(b) of the Act and that an exemption should be granted, to the extent necessary, from the provisions of Section 17(a).



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

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-6660 Filed 5-2-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27304; 812-13113]

### Forum Funds, et al.; Notice of Application

April 26, 2006.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

#### *Summary of the Application:*

Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

*Applicants:* Forum Funds ("Trust"), and Brown Investment Advisory Incorporated ("Advisor").

*Filing Dates:* The application was filed on July 29, 2004, and amended on February 13, 2006 and April 25, 2006.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 22, 2006 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 Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants: Anthony C.J. Nuland, Seward & Kissel LLP, 1200 G Street, NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel, at

(202) 551-6990, or Janet M. Grossnickle, Branch Chief, at (202) 551-6821 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-0104 (telephone (202) 551-8090).

#### Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust currently is comprised of twenty-eight series ("Funds"), each with a separate investment objective, policy, and restrictions.<sup>1</sup> The Advisor, a Maryland corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to nine of the existing Funds ("Series") pursuant to investment advisory agreements ("Advisory Agreements"). Each Advisory Agreement has been approved by the Trust's board of trustees (the "Board"),<sup>2</sup> including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust or the Advisor ("Independent Trustees"), as well as by the shareholders of each Series.

2. Applicants propose to establish a program in which the Advisor, in its capacity as investment adviser to each Series, oversees the portfolio management of a Series by its subadvisors (each, a "Subadvisor"). The Advisor would provide overall investment management services to each Series, including Subadvisor monitoring and evaluation and would

<sup>1</sup> Applicants also request relief with respect to future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Advisor or an entity controlling, controlled by, or under common control with the Advisor; (b) uses the multi-manager structure as described in the application; and (c) complies with the terms and conditions of the application (included in the term "Series"). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. All references to the term "Advisor" herein include (a) the Advisor or its successor in interest (limited to any entity resulting from a reorganization of the Advisor into another jurisdiction or a change in the type of business organization), and (b) an entity controlling, controlled by, or under common control with the Advisor. If the name of any Series contains the name of a Subadvisor (as defined below), the name of the Advisor will precede the name of the Subadvisor.

<sup>2</sup> With respect to a Series not part of the Trust, the term "Board" refers to the board of directors/trustees of the relevant Series.

be responsible for recommending the hiring, termination and replacement of Subadvisors to the Board. All subadvisory agreements ("Subadvisory Agreements") will be approved by the Board, including a majority of the Independent Trustees. Under each Subadvisory Agreement, the Subadvisor would determine which securities will be purchased and sold for a Series' investment portfolio or for a portion of the portfolio. Each Subadvisor will be registered under the Advisers Act and paid by the Advisor out of the fee it receives from the Series under its Advisory Agreement. Applicants request an order to permit the Advisor, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadvisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Series or of the Advisor, other than by reason of serving as a Subadvisor to one or more of the Series ("Affiliated Subadvisor").

3. Applicants also request an exemption from the various disclosure provisions described below that may require a Series to disclose fees paid by the Advisor to each Subadvisor. An exemption is requested to permit each Series, in the event that a Series has more than one Subadvisor, to disclose (both as a dollar amount and as a percentage of a Series' net assets): (a) The aggregate fees paid to the Advisor and Affiliated Subadvisors; and (b) aggregate fees paid to Subadvisors other than Affiliated Subadvisors ("Aggregate Fee Disclosure"). For any Series that employs an Affiliated Subadvisor, the Series will provide separate disclosure of any fees paid to such Affiliated Subadvisor.

#### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N-1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N-1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a-1 under the Act requires proxies solicited with respect to an