

2. Private Equities and MorAmerica Capital may file on a consolidated basis pursuant to the above condition only so long as the amount of Private Equities' total consolidated assets invested in assets other than (a) securities issued by MorAmerica Capital or (b) securities similar to those in which MorAmerica Capital invests, does not exceed 10%.

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

Margaret H. McFarland,
Deputy Secretary.

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[Rel. No. IC-20830; No. 812-9306]

Offitbank Variable Insurance Fund, Inc., et al.

January 11, 1995.

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

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Offitbank Variable Insurance Fund, Inc. ("Fund") and Offitbank (collectively, "Applicants").

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

SUMMARY OF APPLICATION: Applicants seek an order exempting themselves and certain affiliated and unaffiliated life insurance companies ("Participating Insurance Companies") and their separate accounts ("Separate Accounts") to the extent necessary to permit shares of any current or future investment series of the Fund to be sold to and held by Separate Accounts funding variable annuity and variable life insurance contracts issued by Participating Insurance Companies.

FILING DATE: The application was filed on October 24, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 6, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

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

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Stephen Brent Wells, Offitbank Variable Insurance Fund, Inc., 237 Park Avenue, Suite 910, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Attorney, at (202) 942-0554, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a Maryland corporation registered under the 1940 Act as an open-end management investment company.

2. The Fund's common stock is divided into separate series, each series representing an interest in a separate investment portfolio ("Existing Portfolios"). The Board of Directors of the Fund is authorized to classify or reclassify any unissued shares of the portfolios ("New Portfolios") (together with Existing Portfolios, "Portfolios").

3. The Portfolios will serve as investment vehicles for various types of variable annuity and variable life insurance contracts ("Variable Contracts"). Portfolio shares will be offered to Separate Accounts of certain affiliated and unaffiliated Participating Insurance Companies which enter into participation agreements ("Participation Agreements") with the Portfolios and the Fund.¹

4. Offitbank serves as investment adviser to each of the Existing Portfolios. Offit Funds Distributor, Inc. ("Offit") serves of the distributor for the Existing Portfolios. Offitbank is a New York state chartered trust company and is exempt from registration as an investment advisor or as a broker dealer.² Offit is a wholly-owned subsidiary of Furman Selz Incorporated, an unaffiliated, privately-held corporation.³

¹ Applicants represent that the Separate Accounts will be unit investment trusts, and that, during the Notice Period, the application will be amended to reflect this representation.

² Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

³ Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15). Exemptive relief is sought by Applicants and affiliated and unaffiliated Participating Insurance Companies and their Separate Accounts to the extent necessary to permit mixed and shared funding, as defined below.

2. Rule 6e-2(b)(15) provides partial exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to separate accounts registered under the 1940 Act as unit investment trusts to the extent necessary to offer and sell scheduled premium variable life insurance contracts. The relief provided by the rule also extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

3. The exemptions granted by Rule 6e-2(b)(15) are available only to a management investment company underlying a separate account ("underlying fund") that offers its shares exclusively to variable life insurance separate accounts of a life insurer, or of any other affiliated life insurance company, issuing scheduled premium variable life insurance contracts. The relief granted by Rule 6e-2(b)(15) is not available to the separate account issuing scheduled premium variable life insurance contracts if the underlying fund also offers its shares to a separate account issuing variable annuity or flexible premium variable life insurance contracts. The use of a common underlying fund as an investment vehicle for both variable annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as "mixed funding."

4. Additionally, the relief granted by Rule 6e-2(b)(15) is not available to separate accounts issuing scheduled premium variable life insurance contracts if the underlying fund also offers its shares to unaffiliated life insurance company separate accounts funding variable contracts. The use of a common fund as an underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

5. Rule 6e-3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to separate accounts registered as unit investment trusts that offer flexible premium variable life insurance contracts. The exemptive relief extends to a separate account's investment