

7. The Trust also proposes to sell shares of the Variable Series directly to pension or retirement plans ("Qualified Plans") intended to qualify under sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"). Many of the Qualified Plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under section 401(k) of the Code. The Qualified Plans also will be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The Qualified Plans therefore will be subject to regulatory provisions under the Code and ERISA including, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement provisions.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c) of the Act exempting them from sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Variable Series to be offered and sold to, and held by: (a) VA Accounts and VLI Accounts of the same insurance company or of two or more affiliated insurance companies ("mixed funding"); (b) VA Accounts and VLI Accounts of two or more unaffiliated insurance companies ("shared funding"); and (c) Qualified Plans.

2. Rule 6e-2(b)(15) under the Act provides partial exemptions from: (a) Section 9(a) of the Act, which makes it unlawful for certain individuals and companies to act in certain capacities with respect to registered investment companies; and (b) sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require "pass-through" voting with respect to the shares of a registered management investment company underlying a UIT (an "underlying fund") to VLI Accounts supporting scheduled premium VLI Contracts and to their life insurance company depositors, investment advisers, and principal underwriters. The exemptions granted by the Rule are available, however, only if an underlying fund offers its shares exclusively to VLI Accounts of a single Participating Insurance Company or an affiliated insurance company, and then, only if scheduled premium VLI Contracts are issued through such VLI Accounts. Therefore, the relief granted by Rule 6e-2(b)(15) is not available with respect to

a scheduled premium VLI Account that owns shares of an underlying fund that engages in mixed funding by also offering its shares to a VA Account or to a flexible premium VLI Account of the same company or of any affiliated life insurance company. In addition, the relief granted by Rule 6e-2(b)(15) is not available if the underlying fund engages in shared funding by offering its shares to VA Accounts or VLI Accounts of unaffiliated life insurance companies. Furthermore, Rule 6e-2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

3. Rule 6e-3(T)(b)(15) under the Act provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts supporting flexible premium variable life insurance contracts and their life insurance company depositors, investment advisers and principal underwriters. The exemptions granted by the Rule are available, however, only where shares of the Variable Series are offered exclusively to separate accounts of the Participating Insurance Company, or of any affiliated insurance company, offering either scheduled premium contracts or flexible premium contracts, or both, or which also offer their shares to VA Accounts of the Participating Insurance Company or of an affiliated life insurance company. Therefore Rule 6e-3(T)(b)(15) permits mixed funding with respect to a flexible premium VLI Account, subject to certain conditions. However, Rule 6e-3(T)(b)(15) does not permit shared funding because the relief granted is not available with respect to a VLI Account that owns shares of an underlying fund that also offers its shares to separate accounts (including VA Accounts and flexible premium and scheduled premium VLI Accounts) of unaffiliated Participating Insurance Companies. Also, Rule 6e-3(T)(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

4. Applicants state that current tax law permits shares of the Variable Series to be sold directly to Qualified Plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts, such as those in the Variable Series. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets fail to be adequately diversified in accordance with regulations issued by the Treasury Department. On March 1, 1989, the Treasury Department adopted

regulations (Treas. Reg. 1.817-5) (the "Regulations") that established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817-5(f)(3)(iii)).

5. As a result, Qualified Plans may select the Variable Series as an investment option without endangering the tax status of Variable Contracts issued through Participating Separate Accounts as life insurance annuities. Variable Series shares sold to the Qualified Plans would be held by the Trustees of such Plans as required by section 403(a) of ERISA. The Trustees or other fiduciaries of the Qualified Plans may vote Variable Series shares held by the Qualified Plans in their own discretion or, if the applicable Qualified Plan so provides, vote such shares in accordance with instructions from participants in such Plans. The use of a common management investment company (or investment portfolio thereof) as an investment medium for Variable Accounts and Qualified Plans is referred to herein as "extended mixed funding."

6. Applicants note that the promulgation of Rules 6e-2(b)(15) and 6e-3(T)(b)(15) under the Act preceded the issuance of the Regulations. Thus, the sale of shares of the same investment company to both Participating Separate Accounts and Qualified Plans was not contemplated at the time of the adoption of rules 6e-2(b)(15) and 6e-3(T)(b)(15), and, therefore, Applicants assert that the restrictions of such Rules do not evidence an intent of the Commission to prevent extended mixed funding.

7. Section 9(a)(3) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rule 6e-2(b)(15) and Rule