

6e-3(T)(b)(15) limit the application of the eligibility restrictions of section 9(a) to affiliated persons of a life insurance company that directly participate in the management of the underlying registered management investment company under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rule 6e-2(b)(15)(i) and 6e-3(T)(b)(15)(i) permits persons who are affiliated persons of a life insurance company or its affiliates who otherwise would be disqualified under section 9(a) to serve as an officer, director or employee of an underlying fund, so long as any such person does not participate directly in the management or administration of such underlying fund. In addition, Rule 6e-2(b)(15)(ii) and Rule 6e-3(T)(b)(15)(ii) permit a Participating Insurance Company to serve as the underlying fund's investment adviser or principal underwriter, provided that none of that insurance company's personnel who are ineligible pursuant to section 9(a) of the Act participate in the management or administration of the underlying fund.

8. Applicants assert that the partial relief provided by Rules 6e-2(b)(15) and 6e-3(T)(b)(15) under the Act from the requirements of section 9 of the Act limits the amount of monitoring of a Participating Insurance Company's personnel that is necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that Rules 6e-2(b)(15) and 6e-3(T)(b)(15) recognize that applying the provisions of section 9 to the many individuals in a large insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the Participating Separate Accounts, is not necessary or appropriate in the public interest nor is it necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act. Moreover, Applicants assert that disallowing the relief permitted by Rule 6e-2(b)(15) and Rule 6e-3(T)(b)(15) because shares of the Variable Series are sold to Qualified Plans would serve no regulatory purpose. Applicants assert that the sale of shares of an underlying fund to Qualified Plans does not change the fact that the purposes of the Act are not advanced by applying the prohibitions of section 9(a) to individuals who may be involved in a life insurance complex but have no involvement in the underlying fund.

9. Rule 6e-2(b)(15) and Rule 6e-3(T)(b)(15)(iii) under the Act provide partial exemptions from 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 an underlying fund, by allowing an insurance company to disregard the voting instructions of contract owners with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A) permit a Participating Insurance Company to disregard the voting instructions of its contract owners if such instructions would require an underlying fund's shares to be voted to cause such underlying fund to make (or to refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such underlying fund or to approve or disapprove any contract between such underlying fund and an investment adviser when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(A)(2) permit a Participating Insurance Company to disregard contract owners' voting instructions if the contract owners initiate any change in the underlying fund's investment objectives, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules). Applicants assert that these rights do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts.

10. Applicants submit that the reason the Commission did not grant more extensive relief in the area of mixed and shared funding when it adopted Rule 6e-3(T) under the Act is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that the Commission's concern is not warranted in the context of permitting shared funding or permitting Qualified Plans to invest in the Variable Series and that the addition of owners of Variable Contracts supported by separate accounts of unaffiliated life insurance companies and Qualified Plans as eligible shareholders will not increase the risk of material irreconcilable conflicts amongst shareholders.

11. Voting rights of shares sold to Qualified Plans are expressly reserved to certain specified persons and are not required to be passed through to Qualified Plan participants. Under

section 403(a) of ERISA, shares of an underlying fund sold to a Qualified Plan must be held by the trustee(s) of the Qualified Plan, and such trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in section 403(a) applies, the exclusive authority and responsibility for voting shares of an underlying fund is vested in the plan trustees. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

12. If a named fiduciary to a Qualified Plan 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. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

13. If a Qualified Plan does not provide participants with the right to give voting instructions, the Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among owners of Variable Contracts and participants in Qualified Plans with respect to voting of an underlying fund's shares. Accordingly, unlike the case with Participating Separate Accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans because the Qualified Plans are not entitled to pass-through voting privileges.

14. Applicants further note that there is no reason to believe that participants in Qualified Plans which provide participants with the right to give voting instructions generally, or those in a particular Plan, either as a single group