

or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract owners. Applicants, therefore, submit that the purchase of shares of the Variable Series by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that the presence of both VLI Accounts and VA Accounts as shareowners of an underlying fund will not lead to a greater probability of material irreconcilable conflicts than if the underlying fund did not engage in mixed funding. Similarly, shared funding does not present any issues that do not already exist where an underlying fund sells its shares to a single insurance company which sells contracts in several states. A state insurance regulatory body in one state could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that unaffiliated insurers may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants assert that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e-2(b)(15) and 6e-3(T)(b)(15) under the Act permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential for differences in state regulatory requirements. Applicants state that the conditions summarized below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer may be required to withdraw its Participating Separate Account's investment in the Variable Series. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the Variable Series.

17. Rules 6e-2(b)(15) and 6e-3(T)(b)(15) under the Act give the insurance company the right to disregard the voting instructions of the contract owners. Applicants assert that this right does not raise any issues different from those raised by the authority of state insurance

administrators over separate accounts. Under Rules 6e-2(b)(15) and 6e-3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Requiring that only affiliated insurance companies invest in the Variable Series does not eliminate the potential, if any exists, for divergent judgements as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. Moreover, the potential for disagreement is limited by the requirements in Rules 6e-2 and 6e-3(T) that an insurance company's voting instructions be reasonable and based on specific good faith determinations.

18. A particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgement represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Variable Series, to withdraw its Participating Separate Account's investment in such Variable Series, and no change or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in the Variable Series.

19. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of VA and VLI Contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. Variable Series supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding as well as permitting sales to Qualified Plans will provide benefits to the Variable Series shareholders. Among other things, Participating Insurance Companies and Variable Contract owners will benefit from a greater variety of investment options with lower costs.

20. Applicants do not believe that the sale of the shares of the Variable Series to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants assert that there are either no conflicts of interest or that there exists the ability by the affected parties to resolve the issues without harm to the contract owners in the Participating Separate Accounts or to the participants under the Qualified Plans.

21. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with the Regulations, adequately diversified.

22. The Regulations provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The Regulations, however, contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a Qualified Plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817-5(f)(3)(iii)). Thus, the Regulations specifically permit Qualified Plans and separate accounts to invest in the same portfolio of an underlying fund. For this reason, Applicants assert that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interest.

23. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, the different tax consequences do not raise any conflicts of interest. If the Participating Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account or the Qualified Plan will redeem shares of the Variable Series at their net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract. Therefore, distributions and dividends