

will be declared and paid by the Variable Series without regard to the character of the shareholder.

24. Applicants state that it is possible to provide an equitable means of giving voting rights to Variable Contract owners and to the trustees of Qualified Plans. The transfer agent for the Variable Series will inform each Participating Insurance Company of its share ownership in each Participating Separate Account, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e-2 and 6e-3(T) under the Act, as applicable, and its participation agreement with the Trust. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Variable Series will be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

25. Applicants submit that the ability of the Variable Series to sell shares directly to Qualified Plans does not create a "senior security," as such term is defined under section 18(g) of the Act, with respect to any contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of Variable Contract owners or participants under the Qualified Plans, the Qualified Plans and the Participating Separate Accounts have rights only with respect to their respective shares of the Variable Series. They can redeem such shares at their net asset value. No shareholder of the Variable Series will have any preference over any other shareholder with respect to distribution of assets or payment of dividends.

26. Applicants also assert that the veto power of state insurance commissioners over an underlying fund's investment objectives does not create any inherent conflicts of interest between the contract owners of the Participating Separate Accounts and Qualified Plan participants. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all the shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another.

Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

27. In contrast, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Variable Series and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

28. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. The use of a Variable Series as a common investment medium for variable contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to Variable Contract owners by eliminating a significant portion of these costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of TPL, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Variable Series, thereby promoting economics of scale, by permitting increased safety through greater diversification, or by making the addition of new Variable Series more feasible. Applicants assert that the sale of shares of the Variable Series to Qualified Plans in addition to the Separate Accounts will result in an increased amount of assets available for investment by such Variable Series. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Variable Series more feasible.

29. Applicants also submit that the investment of seed capital in the Variable Series presents no potential for irreconcilable conflicts of interest. Seed capital for the Variable Series will be

provided by TPL. Applicants note that Rule 14a-2(b) under the Act provides an exemption from the seed capital requirement for investment companies that are sponsored by an insurance company. The Commission has granted this exemption to mutual funds organized by insurance companies, but because TPL is not an insurance company, the exemption is not available to the Variable Series.

30. Applicants assert that granting the exemptions requested by Applicants will not compromise the regulatory purposes of sections 9(a), 13(a), 15(a) and 15(b) of the Act or Rules 6e-2(b)(15) or 6e-3(T)(b)(15) thereunder.

Applicants' Conditions for Relief

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the Board of Trustees of the Trust ("Board") will consist of persons who are not "interested persons" of the Trust, as defined by section 2(a)(19) of the Act, and the Rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification, or bona-fide resignation of any Trustee, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy may be filled by the Board; (b) for a period of 150 days if a vote of the shareholders is required to fill the vacancy; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. The Board will monitor each Variable Series for the existence of any material irreconcilable conflict between and among the interests of contract holders of all Participating Separate Accounts and participants of Qualified Plans investing in any such Variable Series and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Variable Series are being managed; (e) a difference in voting instructions given by VA Contract owners, VLI Contract owners, and the trustees of Qualified Plans; (f) a decision by a Participating Insurance Company to