

1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the affected Trust. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Fund.

24. Rules 6e-2(b)(15) and 6e-3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. 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. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in rules 6e-2 and 6e-3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

25. A particular insurer'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 insurers (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 judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Trust's election, to withdraw its Separate Account's investment in such Fund. No charge 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 each Fund.

26. Each Fund will be managed to attempt to achieve the investment objective or objectives of such Fund, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. There is no reason to believe that different features of various types of contracts, including the "minimum death benefit" guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of Variable Contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case.

27. Applicants do not believe that the sale of the shares of the Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those which would otherwise exist between variable annuity and variable life insurance contract owners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

28. Applicants considered whether there are any issues raised under the Code, Regulations, or Revenue Rulings thereunder, if Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying fund. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in an underlying mutual fund. 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 regulations prescribed by the Treasury Department, adequately diversified.

29. Regulations issued under section 817(h) 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. However, the Regulations 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 pension or retirement plan without adversely affecting the ability of such shares 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 pension or retirement plans" and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans and Separate Accounts all invest in the same Fund.

30. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Fund at their respective net asset value in conformity with rule 22c-1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan.

31. There is analogous precedent for a situation in which the same funding vehicle was used for contract owners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate account. However, long-term capital gains incurred in such separate accounts were taxed on a different basis than short-term gains and other income with respect to the reserves underlying non-qualified contracts. A tax reserve at the estimated tax rate was established in the separate account affecting only the non-qualified reserves. To the best of Applicants' knowledge, that practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax