

provisions of the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. The Treasury Regulations, however, also contain certain exceptions to this requirement. One exception allows shares in the investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by insurance company separate accounts. (Treas. Reg. 1.817-5(f)(3)(iii)). A second exception allows shares in the investment company also to be held by the investment manager of the investment company, and certain companies related to the investment manager, in connection with the creation or management of the investment company. (Treas. Reg. 1.817-5(f)(3)(ii)). Finally, a third exception allows shares in the investment company also to be held by the general account of a life insurance company that holds or will hold such shares in a separate account, and by certain companies related to the life insurance company. (Treas. Reg. 1.817-5(f)(3)(i)). These latter two exceptions are available only if: (1) The return on such shares held by the investment manager, the general account or the related company is computed in the same manner as the return on shares held by the separate accounts; and (2) the investment manager, the general account and the related company do not intend to sell such shares to the public. Applicants anticipate that the Other Investors and General Accounts will comply with the provisions of the Treasury Regulations when they purchase and hold shares of the Funds.

10. Applicants state that, as a result of these exceptions to the general diversification requirement, Qualified Plans may select the Funds as investment options, and the Other Investors and General Accounts may also hold shares of the Funds, without endangering the tax status of variable contracts issued through the separate accounts of Participating Insurance Companies.

11. The use of a common management investment company (or series thereof) as an investment medium for variable life insurance and variable annuity separate accounts and for Qualified Plans is referred to herein as "extended mixed and shared funding."

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life

insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e-2(b)(15) under the Act provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act. Section 9(a) provides that it is unlawful for any company to serve as an investment adviser or principal underwriter of 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). Rules 6e-2(b)(15)(i) and (ii) provide partial exemptions from section 9(a), and Rule 6e-2(b)(15)(iii) provides a partial exemption from sections 13(a), 15(a), and 15(b) to the extent those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares.

2. The exemptions granted to a registered variable life insurance separate account by Rule 6e-2(b)(15) are available only when all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company", and then only when scheduled premium variable life insurance contracts are issued through variable life insurance separate accounts. Therefore, the relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying management company that also offers its shares (i) to a separate account of the same or an affiliated insurance company to fund variable annuity contracts or flexible premium variable life insurance contracts or (ii) to any separate account of an unaffiliated life insurance company. Furthermore, Rule 6e-2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans, Other Investors and General Accounts.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e-3(T)(b)(15) under the Act provides partial exemptions from section 9(a), and from sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections have been deemed by the Commission to require pass-through voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e-3(T)(b)(15) are available only when all of the assets of the separate account

consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account." Therefore, Rule 6e-3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. Rule 6e-3(T), however, does not permit shared funding because the relief granted by Rule 6e-3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium life insurance separate accounts) of unaffiliated life insurance companies. In addition, Rule 6e-3(T) does not contemplate sales to Qualified Plans or Other Investors or, except in limited circumstances, General Accounts.

4. Applicants maintain, as discussed below, that there is no policy reason why the sale of Fund shares to Qualified Plans, Other Investors or General Accounts should prohibit or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e-2(b)(15) and 6e-3(T)(B)(15). Nonetheless, each of Rules 6e-2 and 6e-3(T) specifically provides that the relief granted thereunder is available only where shares of the underlying fund are offered exclusively to insurance company separate accounts (and, in the case of Rule 6e-3(T), to insurance companies for advances made in connection with separate account operations). In this regard, Applicants request exemptive relief to the extent necessary to permit shares of the Funds to be sold to Qualified Plans, Other Investors and General Accounts while allowing the variable life insurance separate accounts of the Participating Insurance Companies to enjoy the benefits of the relief granted by Rules 6e-2(b)(15) and 6e-3(T)(b)(15).

5. Applicants submit that, if the Funds were to sell their shares only to Qualified Plans, Other Investors or General Accounts, no exemptive relief