

under Rules 6e-2 and 6e-3(T) would be necessary. The relief provided for under Rules 6e-2(b)(15) and 6e-3(T)(b)(15) does not relate to Qualified Plans, Other Investors, General Accounts or to a registered investment company's ability to sell its shares to such purchasers. Applicants note that the promulgation of Rules 6e-2(b)(15) and 6e-3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan, by Other Investors or by General Accounts without adversely affecting the ability of shares of the same investment company also to be held by separate accounts of insurance companies in connection with their variable contracts. Applicants submit that the sale of shares of the same investment company both to separate accounts and to Qualified Plans, Other Investors and General Accounts (other than, as permitted by Rule 6e-3(T), for advances in connection with separate account operations) was not contemplated at the time of the promulgation of Rules 6e-2(b)(15) and 6e-3(T)(b)(15).

6. Applicants are not aware of any reason for excluding separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e-2(b)(15) and 6e-3(T)(b)(15), or for excluding separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e-2(b)(15). Similarly, Applicants are not aware of any reason for excluding separate accounts from the exemptive relief requested because the Funds may also sell their shares to Qualified Plans, Other Investors and General Accounts.

7. Applicants recognize that the reason the Commission did not grant broader relief in the area of mixed and shared funding when the Commission adopted Rule 6e-3(T) 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 in this area is not warranted. Applicants have concluded that the addition of Qualified Plans, Other Investors and General Accounts as eligible shareholders in the Funds does not increase the risk of material irreconcilable conflicts among the shareholders. Applicants have further concluded that, even if a material irreconcilable conflict involving the Qualified Plans, Other Investors or General Accounts arose, such shareholders, unlike the separate accounts, could simply redeem their

shares and make alternative investments.

8. Consistent with the Commission's authority under section 6(c) of the Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request relief for the class consisting of Applicants, the Participating Insurance Companies and their separate accounts investing in the Existing Funds and Future Funds and, to the extent necessary, investment advisers, subadvisers, principal underwriters, managers, administrators and sponsors of the Funds.

9. The Commission has previously granted the exemptive relief requested herein, including the class relief, in the context of mixed and shared funding and extended mixed and shared funding. The Commission has also granted such relief to permit sales of fund shares to investment managers and their affiliates (*i.e.*, Other Investors) and to the general accounts of life insurance companies holding fund shares in their separate accounts and the affiliates of such insurance companies (*i.e.*, General Accounts).

10. Section 9(a) of the Act provides that it is unlawful for any company to serve as 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) and Rules 6e-3(T)(b)(15)(i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

11. Rules 6e-2(b)(15)(i) and 6e-3(T)(b)(15)(i) provide, in effect, that the fact that an individual disqualified under section 9(a)(1) or section 9(a)(2) is an officer, director, or employee of an insurance company, or any of its affiliates, would not, by virtue of section 9(a)(3) of the Act, disqualify the insurance company or any of its affiliates from serving in any capacity with respect to an underlying investment company, provided that the disqualified individual did not participate directly in the management or administration of the underlying investment company.

12. Similarly, Rules 6e-2(b)(15)(ii) and 6e-3(T)(b)(15)(ii) provide, in effect, that the fact that any company disqualified under section 9(a)(1) or section 9(a)(2) is affiliated with the insurance company would not, by virtue

of section 9(a)(3), disqualify the insurance company from serving in any capacity with respect to an underlying investment company, provided that the disqualified company did not participate directly in the management or administration of the investment company.

13. The partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9. These rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies funding separate accounts. These rules further recognize that it is also unnecessary to apply section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as funding media for variable contracts.

14. Applicants submit that there is no regulatory purpose in extending the section 9(a) monitoring requirements because of mixed or shared funding. The Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Those individuals who participate in the management or administration of the Existing Funds and, it is expected, of any Future Fund, will remain the same regardless of which separate accounts, insurance companies or Qualified Plans use such Funds. Applying the monitoring requirements of section 9(a) because of investment by separate accounts of other insurers would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners. With respect to Qualified Plans, they, unlike separate accounts, are not themselves investment companies and therefore are not subject to section 9(a) of the Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of a Fund except by virtue of its holding 5% or more of a Fund's shares. Finally, the relief requested should not be affected by the sale of shares of the Funds to Other Investors or to General Accounts. The eligibility restrictions of section 9(a) will still apply to any officers, directors or employees of Other Investors or Participating Insurance