

Companies who participate directly in the management or administration of the Funds.

15. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a registered separate account. Pass-through voting privileges will be provided by Participating Insurance Companies with respect to all variable contract owners so long as the Commission interprets the Act to require pass-through voting privileges for variable contract owners.

16. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed. Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e-2 and 6e-3(T)). Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(A)(2) provide that, with respect to registered management investment companies whose shares are held by a registered separate account of an insurance company, the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such investment company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of the Rules).

17. Rules 6e-2 and 6e-3(T) recognize that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting Rule 6e-2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly has recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved

by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e-3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) undoubtedly were adopted in recognition of the same considerations.

18. Applicants state that, in addition, sales of shares of the Funds to Qualified Plans, Other Investors and General Accounts will not have any impact on the relief requested with respect to pass-through voting. Qualified Plans are not registered as investment companies under the Act, and there is no requirement to pass through voting rights to plan participants. For those Qualified Plans covered by ERISA, applicable law expressly reserves voting rights associated with the assets of most Plans to certain specified persons. Under section 403(a) of ERISA, shares of a fund sold to a Qualified Plan covered by ERISA must be held by the trustees of the Plan. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (2) when the authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the two exceptions stated in section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

19. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held by the Plan unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Plans in their discretion. Some ERISA-covered Qualified Plans, however, may provide for the trustees, an investment adviser

or another named fiduciary to exercise voting rights in accordance with instructions from participants. For Qualified Plans that are not covered by ERISA, voting rights attributable to investment securities held by the Plans are exercised in accordance with the terms of governing plan documents. Such voting rights may be exercised, as under ERISA-covered Qualified Plans, by plan trustees in their discretion or pursuant to instructions from participants, or, in the case of custodial accounts or IRAs, by individual participants or plan owners.

20. When a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and plan investors with respect to voting a Fund's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts of interest with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

21. Even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in the Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed and shared funding. Unlike mixed and shared funding, plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

22. When a Qualified Plan does afford plan participants rights to give voting instructions, Applicants see no reason to believe that such participants generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage variable contract holders.

23. Other Investors and General Accounts similarly are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of any material irreconcilable conflicts with respect to voting is not present with respect to Other Investors and General Accounts.