

analyzed a number of issues as discussed below to assure themselves that there are either no conflicts of interest or that there will exist the ability of affected parties to resolve the issues without harm to the contract owners in the separate accounts, the participants under the Qualified Plans, the Other Investors or the General Accounts.

32. Applicants considered whether any issues are raised under the Code or the Treasury Regulations or Revenue Rulings thereunder if Qualified Plans, Other Investors, General Accounts, variable annuity separate accounts and variable life insurance separate accounts all invest in the same underlying Fund. As discussed above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance 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.

33. Treasury Department 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 permits 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 shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817-5(f)(3)(iii)). A second such exception permits the investment manager and related companies also to invest in the underlying fund. (Treas. Reg. 1.817-5(f)(3)(ii)). A third such exception permits the general accounts of insurance companies, and related companies, also to invest in the underlying fund. (Treas. Reg. 1.817-5(f)(3)(i)). Thus, Treasury Regulations specifically permit qualified pension and retirement plans, investment managers and certain affiliates, insurance companies and certain affiliates and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code nor the Treasury Regulations or Revenue Rulings

thereunder present any inherent conflicts of interest if Qualified Plans, Other Investors, General Accounts, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

34. Applicants note that, while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, the tax consequences of distributions from variable contracts and Qualified Plans do not raise any conflicts of interest with respect to the use of the Funds. When distributions are to be made, and the separate account or the Qualified Plan cannot net purchase payments to make the distributions, the separate account or the Qualified Plan will redeem shares of the affected Funds at their respective net asset values. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan. The life insurance company will surrender values from the separate account in order to make distributions in accordance with the terms of the variable contract.

35. Moreover, 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 accounts. A long-term capital gains tax was incurred in such separate accounts with respect to the reserves underlying non-qualified contracts but not with respect to the reserves underlying qualified contracts. A tax reserve at the estimated tax rate was established in the separate accounts affecting only the non-qualified reserves. To the best of Applicants' knowledge, this practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to separate accounts and Qualified Plans do not raise any material irreconcilable conflicts of interest with respect to the use of a Fund.

36. Applicants considered whether, and believe that, it is possible to provide an equitable means of giving voting rights to separate account contract owners, Qualified Plans, Other Investors and General Accounts. In connection

with any meetings of shareholders, each Fund or its transfer agent will inform each shareholder, including each Participating Insurance Company (with respect to each of its separate accounts and its general account), Qualified Plan, Other Investor and General Account of its share ownership in the Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e-2 and 6e-3(T), as applicable. So long as the Commission interprets the Act as requiring Participating Insurance Companies to pass-through voting privileges to variable contract owners whose contracts are funded through registered separate accounts, each Participating Insurance Company will vote shares of a Fund held in its separate accounts in a manner consistent with voting instructions timely-received from contract owners and will vote shares of the Fund held in its separate accounts for which no voting instructions from contract owners are timely-received, as well as shares of the Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from contract owners are timely-received. MSS and its affiliates will vote their shares of a Fund in the same proportion as all variable contract owners having voting rights with respect to the relevant Fund or in such manner as may be required by the Commission or its staff. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights that are provided to Qualified Plans with respect to Fund shares would be no different from the voting rights that are provided to Qualified Plans with respect to shares of publicly-available funds.

37. Applicants considered whether a "senior security," as such term is defined under section 18(g) of the Act, is created with respect to any variable contract owner as opposed to a plan participant under a Qualified Plan, an Other Investor or a General Account. Applicants concluded that the ability of the Funds to sell their shares directly to Qualified Plans, Other Investors and General Accounts does not create a senior security. A "senior security" is defined under section 18(g) of the Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." Applicants submit that, regardless of the rights and benefits of participants under Qualified Plans or contract owners under variable contracts, the Qualified Plans, separate