

46. Applicants note that the Commission has issued numerous orders permitting mixed and shared funding and extended mixed and shared funding as well as permitting sales of fund shares in such context to investment advisers, the general accounts of insurance companies and their affiliates. Applicants' proposal for mixed and shared funding and extended mixed and shared funding as well as sales of fund shares in such context to Other Investors and General Accounts complies in all material respects with the same conditions consented to by the applicants for such orders. Therefore, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of sections 9(a), 13(a), 15(a), or 15(b) of the Act or Rules 6e-2 or 6e-3(T) thereunder.

#### Applicants' Conditions

Applicants consent to the following conditions if the Commission considers them appropriate in granting the order requested herein:

1. A majority of the Board of each Fund will consist of persons ("directors") who are not "interested persons" of that Fund (the "Disinterested Directors"), as defined by section 2(a)(19) of the Act, and the rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any director, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the directors; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. Each Board will monitor each of its Funds for the existence of any material irreconcilable conflict between and among the interests of the contract owners of all separate accounts, the participants under the Qualified Plans, the Other Investors and the General Accounts investing in each such Fund and determine what action, if any, should be taken in response to such conflict. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or

judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. In the event that a Qualified Plan ever should become an owner of 10 percent or more of the assets of a Fund, such Qualified Plan will execute a fund participation agreement with that Fund which will include agreement to comply with the conditions set forth herein, to the extent applicable. A Qualified Plan will execute an application with each Fund that contains an acknowledgment of this condition at the time of the Qualified Plan's initial purchase of shares of such Fund.

4. Any Participating Insurance Company (on behalf of itself, its separate accounts, and any of its affiliates investing in a Fund), any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund, and any investment adviser or subadviser to a Fund which is an Other Investor (each on behalf of itself and any of its affiliates (other than a Participating Insurance Company) investing in the Fund) (collectively, the "Participants") will report any potential or existing conflicts to the Board of the relevant Fund. The Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard plan participant voting instructions. The responsibility to report such information and conflicts to and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in a Fund under their agreements governing participation in the Funds, and these agreements will provide that these responsibilities will be carried out with a view only to the

interests of the contract owners and plan participants, as applicable.

5. If it is determined by a majority of the Board of a Fund, or a majority of its Disinterested Directors, that a material irreconcilable conflict exists with respect to that Fund, then the relevant Participant, at its own expense and to the extent reasonably practicable (as determined by a majority of the Disinterested Directors), will take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) In the case of a Participating Insurance Company, withdrawing the assets allocable to some or all of its separate accounts from the Fund and reinvesting such assets in a different investment medium, including another Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of the Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) in the case of a Qualified Plan, withdrawing the assets allocable to the Plan from the Fund and reinvesting such assets in a different investment medium, including another Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, or, if applicable, a decision by a trustee of a Qualified Plan to disregard plan participant voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company or Qualified Plan may be required, at the Fund's election, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of contract owners and plan participants, as applicable.