

participating insurance company and will memorialize, among other matters, the fact that, except where the agreement specifically provides otherwise, the participating insurance company will remain responsible for establishing and maintaining any VLI account or VA account covered by the agreement and for complying with all applicable requirements of state and federal law pertaining to such accounts and to the sale and distribution of variable contracts issued through such accounts.

6. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI accounts and VA accounts of the same insurance company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as "mixed funding." The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts and/or VA accounts of two or more insurance companies that are not affiliated persons of each other, is referred to herein as "shared funding."

7. The Trust may sell its shares directly to the plans. Federal tax law permits investment companies such as the Trust to increase their net assets by selling shares to qualified pension and retirement plans such as the plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying variable contracts, such as those in each Portfolio of the Trust. The Code provides that variable contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817-5) which established specific diversification requirements for investment portfolios underlying variable contracts. The regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as

an adequately diversified underlying investment for variable contracts issued through such segregated asset accounts (Treas. Reg. 1.817-5(f)(3)(iii)).

8. As a result of this exception to the general diversification requirement, qualified pension and retirement plans, such as the plans, may hold Trust shares and select a Portfolio or an investment portfolio of any future trust as an investment option without endangering the tax status of variable contracts as life insurance or annuities, respectively. Trust shares sold to the plans would be held by the trustees of the plans as required by Section 403(a) of ERISA. The trustees or other fiduciaries of the plans may vote Trust shares held by their plans in their own discretion or, if the applicable plan so provides, vote such shares in accordance with instructions from participants in such plans. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts, VA accounts and plans, is referred to herein as "extended mixed funding."

#### **Applicants' Legal Analysis**

9. 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 to VLI accounts supporting scheduled premium VLI contracts and to their life insurance company depositors. The exemptions granted by the Rule are available, however, only where the Trust offers its shares exclusively to VLI accounts of the same participating insurance company and/or of participating insurance companies that are affiliated persons of the same participating insurance company and then, only where scheduled premium VLI contracts are issued through such VLI accounts. Therefore, VLI accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rule 6e-2(b)(15) if shares of the Trust are held by a VLI account through which flexible premium VLI contracts are issued, a VLI account of an unaffiliated participating insurance company, an unaffiliated investment adviser, any VA account or a plan. In other words, Rule 6e-2(b)(15) does not permit a scheduled premium VLI account to invest in shares of a management investment company that serves as a vehicle for mixed funding, extended mixed funding or shared funding.

10. Rule 6e-3(T)(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI accounts supporting flexible premium variable life insurance contracts and their life insurance

company depositors. The exemptions granted by the Rule are available, however, only where the Trust offers its shares exclusively to VLI accounts (through which either scheduled premium or flexible premium contracts are issued) of the same participating insurance company and/or of participating insurance companies that are affiliated persons of the same participating insurance company, VA accounts of the same participating insurance company or of affiliated participating insurance companies, or the general account of the same participating insurance company or of affiliated participating insurance companies. Therefore, VLI accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rule 6e-3(T)(b)(15) if shares of the Trust are held by a VLI account of an unaffiliated participating insurance company, a VA account of an unaffiliated participating insurance company, the general account of an unaffiliated participating insurance company, an unaffiliated investment adviser or a plan. In other words, Rule 6e-3(T)(b)(15) permits VLI accounts supporting flexible premium VLI contracts to invest in shares of a management investment company that serves as a vehicle for mixed funding but does not permit such a VLI account to invest in shares of a management investment company that serves as a vehicle for extended mixed funding or shared funding.

11. In general, Section 9(a) of the Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from acting or serving in various capacities with respect to a registered investment company. More specifically, paragraph (3) of Section 9(a) provides that it is unlawful for any company to serve as investment adviser or principal underwriter for 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).

12. Subject to the limitations described above, Rule 6e-2(b)(15)(i) and (ii) and Rule 6e-3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) to VLI accounts and their affiliates under certain circumstances and subject to certain conditions that would limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the Trust. The relief provided by Rule 6e-2(b)(15)(i) and Rule 6e-3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of a