

22. Applicants maintain that qualified retirement plan investors in the Trust would have substantially the same interests as do VLI owners and VA owners. Like VLI and VA owners, qualified retirement plan investors are long-term investors. Therefore, most can be expected not to withdraw their assets from the plans.

23. In addition, neither VLI and VA owners on the one hand, nor plan investors on the other, would be taxed on the investment return of their respective investments in the Trust. Therefore, they would share a strong interest in the Trust operating in a manner that preserves this tax status. For example, material conflicts between these two groups of investors regarding capital transactions would be unlikely to occur. In this regard, ERISA imposes general diversification requirements on qualified pension or retirement plan investments that are wholly consistent with those required of each Portfolio under Section 817(h) of the Code.

24. VLI accounts, VA accounts and the plans are governed in similar ways. Plan committees (and other plan fiduciaries) have a fiduciary duty to participants that is similar to the obligations that a participating insurance company has to look after the interests of its VLI owners and VA owners. In this respect, applicants note that participating insurance companies and their VLI accounts would not require any exemptions from the Act other than those necessary for mixed funding and shared funding if participants in certain qualified pension and retirement plans invest indirectly in the Trust when their plan purchases a variable annuity contract offered by participating insurance company in the qualified plan market. The various plans may or may not offer an annuity option.

25. In light of the fact that plan investors would have beneficial interests in the Trust very similar to those of VLI owners and VA owners, applicants assert that, provided that they (and VLI accounts and participating insurance companies) comply with the conditions explained below, the addition of the plans as shareholders of the Trust and the addition of participants as persons having beneficial interests in the Trust should not increase the risk of material irreconcilable conflicts among and between investors. Applicants further assert that even if a material irreconcilable conflict involving the plans, or participants arose, the trustees (or other fiduciaries) of the plans, unlike participating insurance companies, can, if their fiduciary duty to the participants requires it, redeem the shares of the

Trust held by the plans and make alternative investments without obtaining prior regulatory approval. Similarly, most, if not all, of the plans, unlike the VLI accounts or the VA accounts, may hold cash or other liquid assets pending their reinvestment in a suitable alternative investment.

26. Applicants maintain that VLI owners and VA owners would benefit from the expected increase in net assets of the Portfolios occasioned by participant investments. Not only should such additional investments not increase the likelihood of material irreconcilable conflicts of interests between or among different types of investors, but such additional investments should reduce some of the costs of investing for variable contract owners. In particular, additional investments would promote economies of scale, permit increased safety through greater portfolio diversification, provide each Portfolio's investment adviser with greater flexibility due to a larger portfolio and make the addition of future new Portfolios more feasible.

27. When the Commission last revised Rule 6e-3(T) in 1987, the Treasury Department had not issued the current regulations (Treas. Reg. 1.817-5) which make it possible for the Trust to sell shares to qualified pension or retirement plans without adversely affecting the tax status of VLI contracts and VA contracts. Applicants submit that, although proposed regulations had been published, the Commission did not envision this possibility when it last examined paragraph (b)(15) of the Rule and might well have broadened the exclusivity provision of that paragraph at that time to include plans such as the plans had this possibility been apparent. In this regard, the Commission has recently issued a number of orders under Section 6(c) granting the same exemptions requested herein to other applicants in very similar circumstances.

28. In light of the fact that the proposed plan investments in the Trust should not increase the likelihood of material irreconcilable conflicts and would otherwise benefit VA owners and VLI owners and in light of the recent supporting precedent, applicants believe that the Commission should grant the requested exemptions.

29. Applicants do not believe that plan investments in the Trust would increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Section 403(a) of ERISA provides that the trustee(s) of a plan must have exclusive authority and discretion to manage and control the

plan with two exceptions: (1) when the plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which event the trustee(s) 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 advisers pursuant to Section 402(c)(3) of ERISA. Absent one of these exceptions, the trustee(s) of the plans would have the exclusive authority and responsibility for exercising voting rights attributable to their plan's investment securities. Where a named fiduciary appoints an investment adviser, the adviser has the authority and responsibility to exercise such voting rights unless the authority and responsibility is reserved to the trustee(s) or a non-trustee fiduciary.

30. Applicants generally expect many of the plans to have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the plans in their discretion. Some of the plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

31. Where plans do provide participants with the right to give voting instructions, applicants see no reason to believe that participants in the plans generally or those in a particular plan, either as a single group or in combination with participants in other plans, would vote in a manner that would disadvantage VLI owners or VA owners. The purchase of Trust shares by the plans that provide voting rights does not present any complications not otherwise occasioned by mixed funding or by shared funding.

32. Section 817(h) of the Code is the codification of certain aspects of a series of published and unpublished rulings issued by the Internal Revenue Service directed at the control of investments supporting most VLI contracts and VA contracts. In light of Treasury Regulation 1.817-5(f)(3)(iii) which specifically permits "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company, applicants have concluded that neither the Code, nor other Treasury Regulations or revenue rulings thereunder, would create any inherent conflicts of interest between or among plan investors, VLI owners and VA owners.

33. Although there are differences in the manner in which distributions from