

accounts and their participating insurance companies and principal underwriters as a class from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rule 6e-2 or Rule 6e-3(T)(b)(15) thereunder. The exemption of these classes of parties is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to VLI accounts whose participating insurance companies enter into participation agreements with the Trust; which agreements would subject such VLI accounts to the conditions discussed below. The Commission staff also would have the opportunity to review compliance with these conditions by participating insurance companies when it reviews the 1933 Act registration statements filed by each VLI account and VA account before the account could issue any variable contracts. The Commission has previously granted exemptions to classes of similarly situated parties in various contexts and from a wide variety of circumstances, including class exemptions in the context of mixed funding, extended mixed funding and shared funding.

#### *Applicants' Conditions*

With regard to the conditions recited below, references to the Trust include any future trust; references to a Portfolio include any investment portfolio of a future trust; and references to Roszel Advisors include any current or future Subadviser and any investment adviser to a future trust or investment portfolio of a future trust. Applicants consent to the following conditions if the exemptions requested herein are granted:

1. A majority of the Trustees (the "Board") of the Trust and each Portfolio will consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the Act, and the rules thereunder, and 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 trustee, then the operation of this condition shall be suspended: (a) for a period of 90 days if the vacancy or vacancies may be filled by the Board; (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.

2. The Board will monitor the Portfolios for the existence of any material irreconcilable conflict between and among the interests of VLI owners and VA owners and of plan participants and plans investing in the Portfolios and determine what action, if any, should be taken in response to any such conflicts. 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 interpretive 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 Portfolios are being managed; (e) a difference in voting instructions given by VLI owners, VA owners and plan investors; (f) a decision by a participating insurance company to disregard the voting instructions of VLI owners or VA owners; or (g) if applicable, a decision by a plan to disregard the voting instructions of plan participants.

3. Roszel Advisors (or any "investment adviser" of a Portfolio), any participating insurance company, and any plan that executes a participation agreement upon becoming an owner of 10% or more of the issued and outstanding shares of a Portfolio (such plans referred to hereafter as "participating plans") will be required to report any potential or existing conflicts to the Board. Roszel Advisors (or any other investment adviser of a Portfolio), participating insurance companies and participating plans 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 a participating insurance company to inform the Board whenever it has determined to disregard VLI owner or VA owner voting instructions, and, if pass-through voting is applicable, an obligation by a participating plan to inform the Board whenever it has determined to disregard plan participant voting instructions. The responsibility to report such conflicts and information, and to assist the Board will be contractual obligations of all

participating insurance companies and participating plans investing in the Portfolios under their agreements governing participation in the Portfolios, and such agreements, shall provide that these responsibilities will be carried out with a view only to the interests of the VLI owners and VA owners, and if applicable, plan participants.

4. If a majority of the Board, or a majority of its disinterested trustees, determine that a material irreconcilable conflict exists, the relevant participating insurance companies and participating plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), will be required to take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Portfolio and reinvesting such assets in a different investment medium, which may include another Portfolio of the Trust; (b) in the case of participating insurance companies, submitting the questions of whether such segregation should be implemented to a vote of all affected owners of all registered VA contracts or VLI contracts, and, as appropriate, segregating the assets of any appropriate group (*i.e.*, VA owners or VLI owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected variable contract owners, the option of making such a change; and (c) establishing a new registered management investment company. If a material irreconcilable conflict arises because of a decision by a participating insurance company to disregard VLI owners' or VA owners' voting instructions and that decision represents a minority position or would preclude a majority vote, the participating insurance company may be required, at the election of the Portfolio, to withdraw its separate account's investment in such Portfolio, with no charge or penalty imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a participating plan's decision to disregard plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the participating plan may be required, at the election of the Portfolio, to withdraw its investment in such Portfolio, with no charge or penalty imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking