

permitted without charge under the Variable Contract.

28. In addition, MLLIC will solicit approval of the proposed Substitutions from MLLIC Variable Contract owners and MLNY will solicit approval of the proposed Substitutions from MLNY Variable Contract owners. Such approval will be sought from the owners of First Generation MLLIC VLI Contracts, Second Generation MLLIC VLI Contracts, MLLIC Annuity Contracts, First Generation MLNY VLI Contracts, Second Generation MLNY VLI Contracts, and MLNY Annuity Contracts, each voting as a separate group. This solicitation will make clear that approval of the proposed Substitutions signifies approval of the Replacement Portfolios' reliance on the Manager of Managers Order described above. If MLLIC and MLNY do not receive approval for the Substitutions (and in effect, the Replacement Portfolios' reliance on the Manager of Managers Order) for all groups of Contracts, MLLIC and MLNY may decide to effect the Substitutions only for some or all of those groups whose owners approve them. Similarly, if MLLIC and MLNY do not receive approval for all of the Substitutions, MLLIC and MLNY may decide to effect only those Substitutions that were approved by Variable Contract owners. Neither MLLIC nor MLNY will effect any proposed Substitution for any group of Contracts that has not approved that Substitution. Approval will be obtained by the affirmative vote of the lesser of: (1) A majority of the outstanding interests in each applicable subaccount investing in the relevant Substituted Portfolio (measured by the dollar value of accumulation units), or (2) 67% of such outstanding interests voted, if votes received represent a majority of such interests. MLLIC and MLNY will solicit approval of Variable Contract owners by sending them written voting forms accompanied by a voting information statement and other disclosure documents in a manner generally consistent with applicable requirements of Regulation 14A under the 1934 Act (collectively, "voting materials"). In particular, the relevant information statement will disclose, in substance, the information required by applicable items of Form N-14. Any beneficial financial interest that MLLIC or MLNY may have in any of the Separate Accounts is immaterial in relation to the interests of Variable Contract owners and neither MLLIC nor MLNY will cast any votes. Pursuant to Rule 20a-1 under the 1940 Act, the voting materials have been filed with

the Commission as proxy materials. Applicants anticipate that voting materials will be sent to Variable Contract owners on October 10, 2003. Unless extended by either MLLIC or MLNY, votes must be received by November 7, 2003 to be counted.

29. All Variable Contract owners will have received a copy of the most recent Replacement Portfolio prospectuses prior to the Substitutions.

30. Finally, within five (5) days after the Substitutions, Variable Contract owners will be notified, by means of a supplement to the prospectus for each of the Variable Contracts, that the Substitutions were carried out ("Post-Substitution Notice"). The Post-Substitution Notice will restate the information set forth in the Pre-Substitution Notice (e.g., advising Variable Contract owners of the "free" transfer right).

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

2. Section 26(c) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substitute security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both. The section was designed to forestall the ability of a depositor to present holders of interest in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable underlying security, or to elect a costly and, in effect, forced redemption. The Applicants submit that the Substitutions meet the standards set forth in Section 26(c) and that, if implemented, the Substitutions would not raise any of the aforementioned concerns that Congress intended to address when the 1940 Act was amended to include this provision. In addition, the Applicants submit that the proposed Substitutions meet the standards that the Commission and its Staff have applied to substitutions that have been approved in the past.

3. The replacement of the Substituted Portfolios with the Replacement Portfolios is consistent with the protection of Variable Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to Section 26(c) of the 1940 Act. The Substitutions will provide Variable Contract owners with comparable investment vehicles.

4. Although not always identical, the investment objectives, policies, and strategies of the Replacement Portfolios are comparable to those of their respective Substituted Portfolios.

5. In each proposed Substitution, the types of investment advisory and administrative services provided to the Replacement Portfolios by their various investment advisers are comparable to the types of investment advisory and administrative services provided to the Substituted Portfolios by their respective investment advisers. Variable Contract owners invested in the Delaware VIP Trend Series (one of the Substituted Portfolios) will enjoy continuity of their investment adviser due to the "manager of managers" approach employed by Roszel Advisors, the investment adviser to the corresponding Replacement Portfolio. The Replacement Portfolio will be managed overall by Roszel Advisors, but much of the day-to-day management activity will be handled by the subadviser, DMC, the investment adviser currently managing the Delaware VIP Trend Series. While Variable Contract owners invested in the AllianceBernstein Quasar Portfolio, whose investment adviser is currently Alliance, would be managed by a new investment adviser and a new subadviser, as stated above, the types of investment advisory and administrative services provided after the Substitution will be comparable to those received before the Substitution. Similarly, the same will be true of the Substitution of shares of the Roszel/PIMCO CCM Capital Appreciation Portfolio (the Replacement Portfolio), whose investment adviser will be Roszel Advisors and whose subadvisers will be PIMCO and Cadence, for shares of the MFS Research Series and MFS Investors Trust Series, whose investment adviser is MFS.

6. Although the Delaware VIP Trend Series' advisory fee and total operating expenses are lower than those of the Roszel/Delaware Trend Portfolio (before any waivers and reimbursements), the AllianceBernstein Quasar Portfolio's advisory fee and total operating expenses are higher than those of the Roszel/Delaware Trend Portfolio (before