

authority of State insurance administrators over separate accounts. Under rules 6e-2(b)(15) and 6e-3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in rules 6e-2 and 6e-3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, a particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Investment Company's election, to withdraw its separate account's investment in that Insurance Investment Company, and no charge or penalty would be imposed as a result of such withdrawal.

16. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, the Manager or General Accounts. The transfer agent(s) for the Insurance Investment Companies will inform each shareholder, including each separate account, each Qualified Plan, the Manager and each General Account, of its share ownership, in an Insurance Investment Company. Each Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement. Investment by Qualified Plans or General Accounts in any Insurance Investment Company will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this

possibility will be known, through prospectus disclosure, to any Qualified Plan or General Account choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans or General Accounts arises, the Qualified Plans or General Accounts may simply redeem their shares and make alternative investments. Votes cast by the Qualified Plans or General Accounts, of course, cannot be disregarded but must be counted and given effect.

17. Applicants assert that there is no reason why the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans and General Accounts (*i.e.*, long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Investment Company. In addition, permitting mixed and shared funding will facilitate the establishment of additional series serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance

Investment Company with a greater variety of investment objectives and policies.

19. Applicants note that section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817-5, which established diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, "qualified pension or retirement plans," "the general account of a life insurance company," "the manager * * * of an investment company" and separate accounts to share the same underlying management investment company. Therefore, neither the Code nor the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts, the Manager and General Accounts all invest in the same underlying fund.

20. Applicants assert that the ability of the Insurance Investment Companies to sell their respective shares directly to Qualified Plans, the Manager or General Accounts does not create a "senior security," as such term is defined under section 18(g) of the 1940 Act, with respect to any variable contract, Qualified Plan, Manager or General Accounts. As noted above, regardless of the rights and benefits of contract owners or Plan participants, the Separate Accounts, Qualified Plans, the Manager and the General Accounts have rights only with respect to their respective shares of the Insurance Investment Companies. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Investment Companies has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Applicants assert that permitting an Insurance Investment Company to sell its shares to the Manager in compliance with Treas. Reg. 1.817-5 will enhance Insurance Investment Company management without raising significant concerns regarding material irreconcilable conflicts. Applicants assert that the Insurance Investment Companies may be deemed to lack an insurance company "promoter" for purposes of rule 14a-2 under the Act. Accordingly, Applicants assert that such Insurance Investment Companies will be subject to the requirements of section 14(a) of the 1940 Act, which generally requires that an investment company