

to receipt of the order granting the requested exemption, in Fixed Contracts and other short-term fixed income investments. Each Profile Portfolio will limit its investments in Fixed Contracts and other short-term fixed income investments to the amount of portfolio assets that the Profile Portfolio may allocate to the "Short-Term Bond" asset class, as specified in the Profile Portfolio's then-current registration statement, subject to such other limitations as may apply under the Act or the Profile Portfolio's other investment policies and restrictions. Currently, the percentages of portfolio assets allocable to the Short-Term Bond asset class based on overall investment objective are as follows: (i) 25–40% for the Conservative Profile; (ii) 5–25% for the Moderately Conservative Profile; (iii) 5–250% for the Moderate Profile; (iv) 0–10% for the Moderately Aggressive Profile; and (v) 0–10% for the Aggressive Profile.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that Section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to Section 22(b) or Section 22(c) of the Act by a securities association registered under Section 15A of the Securities Exchange Act of

1934, or the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on Section 12(d)(1)(F) or (G). Section 12(d)(1)(G)(ii) defines the term "group of investment companies" to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Profile Portfolios will invest in shares of Other Portfolios, they cannot rely on the exemption from Sections 12(d)(1)(A) and (B) afforded by Section 12(d)(1)(G).

3. Section 12(d)(1)(F) of the Act provides that Section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, Section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

4. Applicants may not rely on the exemption provided by Section 12(d)(1)(G) for several reasons. First, Section 12(d)(1)(G)(i)(I) requires that a fund of funds relying on subparagraph (G), as well as all underlying funds, be part of the same "group of investment companies" as defined in Section 12(d)(1)(G)(ii). Pursuant to the 1999 Order, the Profile Portfolios may invest not only in shares of Underlying Portfolios, but also, subject to the limitations described above, in shares of Other Portfolios. Second, Section 12(d)(1)(G)(i)(II) limits the types of investments which a fund of funds relying on subparagraph (G) may hold to securities of funds that are part of the same "group of investment companies" as the fund of funds, Government securities and short-term paper. The Profile Portfolios, however, propose to invest not only in the types of securities that are described in Section 12(d)(1)(G)(i)(II) and in Other Portfolios, but also in shares of the Fixed Contracts.

5. Section 12(d)(1)(f) of the Act provides that the Commission may exempt persons or transactions from any provision of Section 12(d)(1) if and to the extent such exemption is consistent

with the public interest and the protection of investors.

6. Applicants request relief under Section 12(d)(1)(f) of the Act from the limitations of Sections 12(d)(1)(A) and (B) to permit the Profile Portfolios to invest in the Underlying Portfolios and the Fixed Contract. Applicants are not requesting relief from any provision of Section 12(d)(1)(F), upon which the Profile Portfolios rely to invest in Other Portfolios.

7. Applicants state that the Profile Portfolios' investments in the Underlying Portfolios do not raise the concerns about undue influence that Sections 12(d)(1)(A) and (B) were designed to address. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of sales charges or other fees.

8. The Profile Portfolios will invest in Other Portfolios only within the limits of Section 12(d)(1)(F).

9. Section 17(a)(1) prohibits any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling any security or other property to such registered company. Section 17(a)(2) of the Act prohibits any of the persons described in subsection (a)(1) from purchasing any security or other property from such registered investment company.

10. Section 2(a)(3) of the Act defines "affiliated person" of another person in pertinent part as (i) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (ii) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (iii) any person directly or indirectly controlling, controlled by, or under common control with, such other person; or (iv) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

11. The Applicants submit that the Adviser may be deemed to be an affiliated person of the Fund because the Adviser is an investment adviser of the Fund and GWL&A may be deemed to be an affiliated person of the Adviser because GWL&A owns more than five percent of the outstanding voting securities of the Adviser, a wholly owned subsidiary of GWL&A. Therefore, any sale by GWL&A of a Fixed Contract to the Profile Portfolios could be deemed, absent relief, to be a principal transaction between the Fund and an affiliated person of an affiliated person