

of the Fund in violation of Section 17(a)(1). The Applicants also submit that the Commission may determine that control by GWL&A over the Profile Portfolios exists because a wholly owned subsidiary of GWL&A, the Adviser, serves as an investment adviser of the Fund. Thus, any sale by GWL&A of a Fixed Contract to the Profile Portfolios could also be deemed, absent relief pursuant to Section 17(b), to be a principal transaction between the Fund and an affiliated person of the Fund in violation of Section 17(a)(1).

12. Section 17(b) of the Act provides that, notwithstanding Section 17(a), a person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of that subsection. The Commission shall grant such application and issue such order of exemption if evidence establishes that: (i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of each registered investment company concerned as recited in its registration statement and reports filed under the Act; and (iii) the proposed transaction is consistent with the general purposes of the Act.

13. Section 6(c) of the Act provides that the Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule or regulation thereunder. The Commission shall grant such exemption if and to the extent that such exemption is necessary or 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.

14. Applicants seek an order of the Commission under Section 17(b) and Section 6(c) of the Act, granting an exemption from the prohibitions of Section 17(a), that would permit GWL&A to sell, and any Profile Portfolio to purchase, from time to time, one or more Fixed Contracts in a manner consistent with the applicable Profile Portfolio's investment objective, policies and restrictions. Applicants are seeking relief pursuant to Section 6(c) in addition to Section 17(b) because Section 17(b) could be interpreted as giving the Commission power to exempt only a single transaction from Section

17(a), as opposed to an ongoing series of future transactions. Applicants contend that relief is appropriate under Section 17(b) because the proposed arrangement meets the requirements of that section, for the reasons set forth herein. Applicants also contend that relief under Section 6(c) is appropriate for the same reasons.

15. Applicants assert that the terms of the proposed arrangement are fair and reasonable and do not involve overreaching. The proposed arrangement is not susceptible to the kinds of serious harms that could result from a violation of Section 17(a). For example, Section 17(a) was intended to guard against the possibility that "an unscrupulous investment company might 'dump' undesirable securities on a registered investment company or transfer desirable securities from a registered investment company to another more favored advisory client in the complex." Therefore, the Applicants contend that, under the facts presented in this Application, there is no likelihood of any overreaching in this regard because the Fixed Contracts will not be transferable. A Profile Portfolio will only invest in a Fixed Contract in a manner consistent with its investment policies and restrictions, and will not be permitted to transfer its ownership of a Fixed Contract to any other Profile Portfolio or other person. Rather, each Profile Portfolio will be permitted to remove its assets from a Fixed Contract at any time without imposition of any market value adjustment or other charge or deduction.

16. Applicants further assert that Section 17(a) was also designed to guard against the possibility that an affiliated transaction might be effected at a price that is disadvantageous to the registered investment company. Under the proposed arrangement, however, the Applicants emphasize that the Profile Portfolios will pay no type of sales load in purchasing a Fixed Contract, and the guaranteed rate paid on the Fixed Contract will be at least as favorable as the guaranteed rate paid on other similar Fixed Contracts issued by GWL&A or other comparable companies, leaving no likelihood of overreaching by an affiliated person.

17. Applicants assert that subject to any necessary shareholder approvals, the proposed transaction will be consistent with the investment objectives and policies of each Profile Portfolio. The assets of each Profile Portfolio will be invested in the Fixed Contracts in accordance with the investment policies and restrictions of the applicable Profile Portfolio, as set

forth in its then-current registration statement.

18. Applicants assert that the proposed arrangement is consistent with the general purposes of the Act. Section 17(a) is intended to prohibit affiliated persons in a position of influence or control over an investment company from furthering their own interest by selling securities or property that they own to an investment company at an inflated price, purchasing securities or property from an investment company at less than its fair value, or selling or purchasing securities or property on terms that involve other types of self-dealing or overreaching by the affiliated person. For the reasons discussed above, Applicants contend that the proposed arrangement does not involve any such overreaching or self-dealing.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. All Underlying Portfolios will be part of the same "group of investment companies," as defined in Section 12(d)(1)(G)(ii) of the Act, as the Profile Portfolios.

2. No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions. No Profile Portfolio will acquire securities of an Other Portfolio if, at the time of acquisition, the Other Portfolio owns securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act.

3. No Profile Portfolio will impose a front-end sales charge in excess of one and one-half percent. Furthermore, any sales charges, distribution-related fees and service fees relating to the shares of the Profile Portfolios, when aggregated with any sales charges, distribution-related fees and service fees paid by the Profile Portfolios relating to their