

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 6(c) of the 1940 Act granting exemptions from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 6e-3(T)), to the extent necessary to permit shares of each Insurance Trust to be offered and sold to, and held by: (1) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) Qualified Plans; (3) any Manager to an Insurance Fund; and (4) General Accounts.

2. Section 6(c) authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of any rule thereunder 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 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust ("Trust Account"), Rule 6e-2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e-2(b)(15) are available only where each registered management investment company underlying the Trust Account ("underlying fund") offers its shares "exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *." (emphasis added). Therefore, the relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding." In addition,

the relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding." Moreover, because the relief under Rule 6e-2(b)(15) is available only where shares are offered *exclusively* to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans, the Manager or General Accounts.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e-3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e-3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more underlying funds which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company" (emphasis added). Therefore, Rule 6e-3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e-3(T) does not permit shared funding because the relief granted by Rule 6e-3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. The relief provided by Rule 6e-3(T) is not relevant to the purchase of shares of the Insurance Trusts by Qualified Plans, the Manager or General

Accounts. However, because the relief granted by Rule 6e-3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans, the Manager or General Accounts.

5. The relief provided by Rule 6e-3(T) is not relevant to the purchase of shares of the Insurance Trusts by Qualified Plans, the Manager or General Accounts. However, because the relief granted by Rule 6e-3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans, the Manager or General Accounts. None of the relief provided for in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) relates to Qualified Plans, the Manager or General Accounts, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Trusts may themselves be investment companies that rely upon Rules 6e-2 and 6e-3(T) and wish to continue to rely upon the relief provided in those Rules, that the Applicants are applying for the requested relief. If and when a material irreconcilable conflict arises in the context of the Application between the Separate Accounts or between Separate Accounts on the one hand and Qualified Plans, the Manager or General Accounts on the other hand, the Participating Insurance Companies, Qualified Plans, the Manager and the General Accounts must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as an eligible investment option. Applicants have concluded that investment by the Manager or the inclusion of Qualified Plans and General Accounts as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans or General Accounts arose, the Qualified Plans or General Accounts, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and