

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 Trust 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 Trust. 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 Trust 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 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 Trusts 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 contract owner as opposed to a participant under a Qualified Plan, the Manager or a General Account. 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 Trusts. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Trusts has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Applicants assert that permitting an Insurance Trust to sell its shares to the Manager in compliance with Treas. Reg. 1.817-5 will enhance Insurance Trust management without raising significant concerns regarding material irreconcilable conflicts. Applicants assert that, unlike the circumstances of many investment companies that serve as underlying investment media for

variable insurance products, the Insurance Trusts may be deemed to lack an insurance company "promoter" for purposes of Rule 14a-2 under the Act. It is anticipated that many other Insurance Trusts may lack an insurance company promoter. Accordingly, Applicants assert that such Insurance Trusts will be subject to the requirements of section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of \$100,000 upon making a public offering of its shares.

22. Applicants assert that given the conditions of Treas. Reg. 1.817-5(i)(3) and the harmony of interest between an Insurance Trust, on the one hand, and its Manager or a Participating Insurance Company, on the other, little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants assert that permitting investment by the Manager will permit the orderly and efficient creation and operation of Insurance Trusts, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Trust operations.

23. Applicants assert that various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain Participating Insurance Companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Trusts as a common investment medium for variable contracts, Qualified Plans and General Accounts would help alleviate these concerns, because Participating Insurance Companies, Qualified Plans and General Accounts will benefit not only from the investment and administrative expertise of TCW, or any other investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Trusts available for mixed and shared funding and permitting the purchase of Insurance Trust shares by Qualified Plans and General Accounts may encourage more insurance companies to offer variable contracts, and this should