

adviser, principal underwriter, and sponsor or depositor. These exemptions are available only where the underlying fund of the separate accounts offers its 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 \* \* \*." Therefore, Rule 6e-3(T) permits mixed funding with respect to a flexible premium variable life insurance separate accounts, 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 to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of affiliated life insurance companies.

6. For these reasons, Applicants seek an order under Section 6(c) of the 1940 Act. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an 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.

7. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-ended investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2). Subparagraphs (b)(15)(i) and (ii) of Rules 6e-2 and 6e-3(T) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by subparagraphs (b)(15)(i) of Rules 6e-2 and 6e-3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by subparagraph (b)(15)(ii) of Rules 6e-2 and 6e-3(T) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are

participating in the management or administration of the fund.

8. Applicants state that the partial relief granted under subparagraphs (b)(15) of Rules 6e-2 and 6e-3(T) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that Rules 6e-2 and 6e-3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in that organization. Applicants further submit that there is no regulatory reason to apply the provisions of Section 9(a) to the many individuals in various unaffiliated Participating Insurance Companies that may utilize the Portfolios as the funding medium for variable contracts because of mixed and shared funding.

9. Subparagraph (b)(15)(iii) of Rules 6e-2 and 6e-3(T) provide partial exemptions from Sections 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 management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contractowners in certain limited circumstances.<sup>4</sup>

10. Voting instructions may be disregarded under subparagraph (b)(15)(iii)(A) of Rules 6e-2 and 6e-3(T) if they would cause the underlying fund to make, or refrain from making, certain investments which would result in changes to the subclassification or investment objectives of the underlying fund, or to approve or disapprove any contract between a fund and its investment advisers, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(15)(i) and (b)(7)(ii)(A) of each Rule.

11. Under subparagraph (b)(15)(iii)(B) of Rule 6e-2 and subparagraph (b)(15)(iii)(A)(2) of Rule 6e-3(T), an insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in the underlying fund's investment

objectives, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each Rule.

12. Applicants submit that shared funding by affiliated life insurance does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurer may be domiciled in different states does not create a significantly different or enlarged problem.

13. Applicants state further that, under paragraph (b)(15) of Rules 6e-2 and 6e-3(T), the right of an insurance company to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser. Applicants state that 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.

14. Applicants submit that mixed and shared funding should benefit variable contractowners by: (a) eliminating a significant portion of the costs of establishing and administering separate funds; (b) permitting the expansion of the variety of funding options available under existing variable contracts; and (c) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

15. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Applicants state that each of the Portfolios will be managed to attempt to achieve its investment objective and not to favor or disfavor any particular Participating Insurance Company, separate account, or type of insurance product. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of

<sup>4</sup> Applicants request no relief for variable annuity separate accounts from the disqualification or pass-through voting provisions.