value. The Plan will then make distributions in accordance with the terms of the Plan. A Participating Insurance Company will surrender values from the separate account into the general account make distributions in accordance with the terms of the variable contract.

19. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that the Funds will inform each shareholder, including each Account and Plan, of its respective share of ownership in the respective Funds. Each Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement.

20. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans 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 Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the Accounts have rights only with respect to their shares of the Funds. Such shares may be redeemed only to net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Finally, Applicants state that there are no conflicts between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually are unable to simply redeem their separate accounts out of one fund and invest those monies in another fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans or the participants in participantdirected Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing,

Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Plans conflict, the issues can be almost immediately resolved in that trustees of the Plans can, independently, redeem shares out of the Funds.

22. Applicants stat that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under the Plans and owners of the Contracts issued by the Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

23. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to invest management (particularly with respect to stock and money market investments); and the lack of name recognition by the public of certain insurers as investment professionals. Applicants argue that use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of the Funds' investment advisor, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants argue that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by the Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

24. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous issuance of orders permitting mixed and shared funding where shares of a fund were sold directly to qualified plans such as the Plans.

## **Applicants' Conditions**

Applicants have consented to the following conditions if the order requested in the application is granted:

requested in the application is granted: 1. A majority of the Board of Trustees or Board of Directors of each Fund (each, a "Board") shall consist of persons who are not "interested persons" of the Funds, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operator of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the Contract owners of all of the Accounts investing in the respective Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, noaction or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities, (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners.

3. The Participating Insurance Companies, Quest Advisors (or any other investment advisor of the Funds), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the "Participants") will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility