procedures of the applicable Transferor and Transferee Portfolios.

17. ASLAC or the investment adviser of the Transferee Portfolio will assume the transfer and custodial expenses and legal and accounting fees of the Substitutions, and Contract owners will not incur any fees or charges as a result of the transfer of account value from any portfolio. The Substitutions will not increase Contract and Separate Account fees and charges after the Substitutions. In addition, Applicants state that the Substitutions have been designed to avoid any adverse federal income tax impact on Contract owners.

18. Following the Substitutions, the sub-accounts which invest in the Transferor Portfolios will be terminated.

Applicants' Legal Analysis

Request for an Order Pursuant to Section 26(b) of the 1940 Act

- 1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the 1940 Act.
- 2. Section 26(b) protects the expectation of investors in a UIT that the UIT will accumulate shares of a particular issuer. The Section also prevents unscrutinized security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust (holding the shares of one issuer) from substituting the shares of another issuer for those shares, unless the Commission approves the Substitutions.
- 3. Applicants represent that the purposes, terms, and conditions of the Substitutions will not entail any of the abuses that Section 26(b) is designed to prevent for the following reasons:
- a. The proposed Substitutions are for shares of the Transferee Portfolios with investment objectives of the corresponding Transferor Portfolios so as to provide a means for Contract owners to continue their current investment goals and risk expectations.
- b. The proposed Automatic Selection Options will be only temporary because

Contract owners may always exercise their own judgment as to the most appropriate alternative investment vehicles. No sales load deductions will be made in connection with any transfers among the portfolios by reason of the Substitutions. After the Substitutions, the Affected Contracts would still offer a broad array of variable investment options and Contract owners who have not annuitized may at any time transfer their account value to any of the other portfolios offered under their respective Contracts.

- c. the transactions effecting the proposed Substitutions including the redemption of Transferor Portfolio shares and the purchase of Transferee Portfolio shares will be effected at net asset value in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder.
- d. The anticipated utilization of "inkind" redemptions by the Transferor Portfolios for the purchase by the Separate Account of Transferee Portfolio shares, in conformity with Section 22(g) of the 1940 Act, may reduce transaction costs of the Substitutions.
- e. ASLAC or the Transferee Portfolio investment adviser will assume various expenses and transaction costs relating to the Substitutions, including custodial and transfer fees incurred by use of any "in kind" redemptions, and legal and accounting fees.
- f. The Substitutions will not alter or affect the insurance benefits provided by ASLAC to Contract owners or the terms or obligations under the terms of the Contracts.
- g. The Substitutions are designed to avoid any adverse effects upon the tax benefits available to Contract owners; the Substitutions are designed not to give rise to any current federal income tax to Contract owners.
- h. The Substitutions are expected to confer economic benefits by virtue of the enhanced asset size of the Transferee Portfolios.
- 4. Applicants state that under the circumstances it is in the best interest of Contract owners to proceed with the Substitutions. The Substitutions are appropriate because the overall investment objectives of the Transferee Portfolios are similar and their investment objectives are compatible to the Transferor Portfolios.
- 5. Applicants also represent that total fees and expenses as a percentage of net assets for the Transferee Portfolios are expected to decrease through economies of scale caused by the anticipated increase in asset size and the increased similarity of available portfolios in

applicable Contracts as a result of the Substitutions.

Request for Order Pursuant to Section 6(c) and 17(b) of the 1940 Act

- 6. Applicants seek an exemption from Section 17(a) through both Sections 17(b) and 6(c) of the 1940 Act because Section 17(b) permits the Commission to exempt a single "proposed transaction" whereas Section 6(c) enables the Commission to exempt a series of transactions.
- 7. Under certain circumstances, Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person of the persons described above from purchasing any security or other property from such registered investment company.
- 8. Applicants state that since the Substitutions may be deemed to involve one or more purchases or sales of securities between and among affiliated persons, the Substitutions may involve transactions prohibited by Section 17(a) of the 1940 Act. Applicants also state that the Substitutions may not be exempt from Section 17 of the 1940 Act pursuant to Rule 17a–7 thereunder, since the affiliations among some of the parties do not arise solely through having common investment advisers, common directors and/or common officers.
- 9. Section 17(b) authorizes the SEC to issue an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (1) the proposed transaction is fair and reasonable and does not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act. Applicant represent that the terms of the Substitutions are consistent with the standard for relief described in Section 17(b) of the 1940 Act.
- 10. The Substitutions will be effected at the net asset value of the securities involved. ASLAC or the adviser of the Transferee Portfolios will bear those expenses associated with the transfers. The Substitutions and transfers of securities are consistent with the policies of each investment company involved and of the 1940 Act.
- 11. As a condition to the granting of an order of exemption under Section