9. Moreover, Applicants assert that if the Trust were to sell its shares only to Qualified Plans, no exemptive relief would be necessary. Applicants state that none of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to qualified plans or to underlying fund's ability to sell its shares to such plans. It is only because the Separate Accounts investing in the Trust are themselves investment companies which are relying upon Rules 6e–2 and 6e–3(T) and which propose to have the relief continue in place that the Applicants are applying for the requested relief.

Grounds for Relief

10. Accordingly, 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.

11. 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.

12. 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.

13. Subparagraphs (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provide partial exemptions from Section 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 Variable Contract owners in certain limited circumstances.[1]

14. Voting instructions may be disregarded under subparagraphs (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)(5)(i) and (b)(7)(ii)(A) of each Rule.

15. 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 Variable Contract owners' voting instructions if the Variable Contract owners 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 paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

16. Applicants further assert that the proposed sale of shares of the Trust to Qualified Plans does not impact of the relief requested. As previously noted, Rules 6e–2(b)(15)(iii) and 6–3(T)(15)(iii) permit an insurer to disregard Variable Contract owner voting instructions in certain circumstances. Offering shares of the Trust to Qualified Plans would not affect the circumstances and conditions under which any veto right would be exercised by a Participating Insurance Company. Furthermore, as stated above, shares of the Trust would be sold only to Qualified Plans for which such shares would be held by the trustee(s) of such plans as mandated by Section 403(a) of ERISA. Section 403(a) provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (1) when the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions of such fiduciary made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (2) when the authority to manage, acquire, or dispose of assets of the Qualified Plans is delegated to one or more investment managers under Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Qualified Plan trustee(s) have the exclusive authority and responsibility for voting proxies. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustee(s) or the named fiduciary. In any event, Applicants assert that pass-through voting to the participants in such Qualified Plans is not required under ERISA or the securities laws. Accordingly, applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material, irreconcilable conflicts with respect to voting is not present with Qualified Plans.

17. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants submit that shared funding by unaffiliated insurance companies 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 assert 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 Variable Contracts. Accordingly, Applicants submit that the fact that different insurers may be domiciled in

[1] Applicants request no relief for variable annuity separate accounts from the disqualification or pass-through voting provisions.