



Stradley Ronon Stevens & Young, LLP  
1220 19th Street, N.W., Suite 600  
Washington, DC 20036  
Telephone 202.822.9611  
Fax 202.822.0140  
www.stradley.com

Douglas J. Scheidt, Esq.  
Associate Director and Chief Counsel  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

RE: Gartmore Variable Insurance Trust

Dear Mr. Scheidt:

The purpose of this letter is to request assurance that the staff of the Division of Investment Management will not recommend enforcement action to the U.S. Securities and Exchange Commission (the "Commission") under Section 17(a) of the Investment Company Act of 1940 ("1940 Act") against Gartmore Variable Insurance Trust ("GVIT") if certain of its portfolios conduct in-kind purchases of securities in the manner discussed below. The transactions would be conducted in virtually the same manner as those in *GE Institutional Funds* (Dec. 21, 2005) ("*GE Letter*") where the staff granted Section 17(a) no-action relief. Accordingly, we believe that the in-kind purchases would benefit shareholders and not contravene the policies underlying Section 17(a).

## I. Background

GVIT, a Delaware statutory trust, is an open-end management investment company registered under the 1940 Act. GVIT currently consists of 47 portfolios, including the following: Gartmore GVIT Investor Destinations Aggressive Fund, Gartmore GVIT Investor Destinations Moderately Aggressive Fund, Gartmore GVIT Investor Destinations Moderate Fund, Gartmore GVIT Investor Destinations Moderately Conservative Fund and Gartmore GVIT Investor Destinations Conservative Fund (collectively, the "GVIT ID Funds"). These portfolios serve as investment vehicles for separate accounts of Nationwide Mutual Insurance Company and its insurance company affiliates ("Nationwide") that issue variable insurance contracts. Gartmore Mutual Fund Capital Trust ("Gartmore"), or one of Gartmore's registered investment advisory affiliates, serves as an investment adviser to GVIT (including the GVIT ID Funds).<sup>1</sup>

<sup>1</sup> Gartmore was organized in 1999 as an investment adviser for mutual funds. Gartmore is part of the NWD Investment Group, the asset management arm of Nationwide.

Douglas J. Scheidt, Esq.  
December 29, 2006  
Page 2 of 12

The GVIT ID Funds operate as funds of funds in reliance on a Commission exemptive order under Section 12(d)(1)(J) of the 1940 Act from the prohibitions contained in Sections 12(d)(1)(A) and (B) (the "Order").<sup>2</sup> The Order also granted an exemption under Sections 6(c) and 17(b) from the prohibitions of Section 17(a) to the extent necessary to implement the fund of funds structure. Under the Order, the GVIT ID Funds are authorized to invest in funds both inside and outside the Gartmore complex of investment companies, as well as a fixed rate insurance contract issued by Nationwide. The Order does not, however, grant any exemption pursuant to which the GVIT ID Funds could conduct the proposed in-kind purchases that are described below.

Gartmore Mutual Funds ("GMF"), also a Delaware statutory trust, is an open-end management investment company registered under the 1940 Act. GMF is primarily intended for retail investors. GMF consists of 51 portfolios, including the following: Gartmore Bond Index Fund, Gartmore Enhanced Income Fund, Gartmore International Index Fund, Gartmore Mid Cap Market Index Fund, Gartmore Money Market Fund, Gartmore S&P 500 Index Fund and Gartmore Small Cap Index Fund (collectively, the "GMF Underlying Funds"). The GMF Underlying Funds currently serve as underlying funds in which the GVIT ID Funds invest under the Order. Gartmore, or one of Gartmore's registered investment advisory affiliates, serves as an investment adviser to GMF (including the GMF Underlying Funds).

GVIT offers portfolios that correspond with the GMF Underlying Funds as follows: GVIT Bond Index Fund, GVIT Enhanced Income Fund, GVIT International Index Fund, GVIT Mid Cap Index Fund; GVIT S&P 500 Index Fund; GVIT Small Cap Index Fund and Gartmore GVIT Money Market Fund (the "GVIT Underlying Funds").<sup>3</sup> At present, the majority of each GVIT ID Fund's assets are still invested in the GMF Underlying Funds. Nevertheless, Gartmore would like to restructure the GVIT ID Funds' investments in the GVIT Underlying Funds so that they would invest predominately in the GVIT Underlying Funds.<sup>4</sup> The same persons serve as members of the Board of Trustees of GVIT and GMF (the "Board").

---

<sup>2</sup> *In the Matter of Nationwide Life Insurance Company, et al.*, Investment Company Act Rel. Nos. 25492 (Mar. 21, 2002) (notice) and 25528 (Apr. 16, 2002) (order).

<sup>3</sup> As the GVIT Bond Index Fund, GVIT Small Cap Index Fund and GVIT Enhanced Income Fund registration statements were effective as of May 1, 2006, and are not yet being offered to public investors, these have minimal, if any, assets as of the date of this letter. These Funds will commence operations when the GVIT ID Fund assets are transferred pursuant to the proposed in-kind transactions. The Funds will have substantially identical underlying portfolio securities and in substantially the same proportional amounts as the GMF Underlying Funds when the Funds are publicly offered.

<sup>4</sup> Upon completion of the proposed transactions, the GVIT ID Funds will no longer have any remaining investments in the GMF Underlying Funds.

Douglas J. Scheidt, Esq.  
December 29, 2006  
Page 3 of 12

## II. Proposed Transactions

The proposed in-kind transactions are part of a restructuring of the underlying investments of the GVIT ID Funds from a predominance of GMF Underlying Funds to a predominance of GVIT Underlying Funds to allow insurance company separate accounts that invest in the GVIT ID Funds greater flexibility in satisfying certain diversification requirements imposed on them by the Internal Revenue Code ("IRC"). To satisfy such diversification requirements, a separate account may "look through" to the assets held by any fund in which the separate account invests as long as all of the beneficial interests of the fund are held by one or more separate accounts of one or more insurance companies.<sup>5</sup> This look-through approach is not available where the GVIT ID Funds invest in the GMF Underlying Funds because the shares of such GMF Underlying Funds are not sold exclusively to insurance company separate accounts for use with variable insurance products. Consequently, while an investment by a GVIT ID Fund in a GMF Underlying Fund is legally permissible, any analysis of compliance with the IRC's diversification requirements will treat the shares issued by the GMF Underlying Fund as an investment in the securities of that single issuer, rather than an investment in the securities of the various issuers represented by the portfolio securities holdings of that GMF Underlying Fund. A restructuring of the GVIT ID Funds' investments predominantly to the GVIT Underlying Funds, as described herein, therefore will permit the separate accounts to look through to the portfolio securities held by the GVIT Underlying Funds in satisfying their diversification requirements.

These IRC requirements additionally mandate that the holders of variable insurance contracts that are invested in a separate account not be permitted to exercise control over the investments made by the separate account. The Internal Revenue Service reasons that if a holder of a variable contract can select and control the investment assets in the separate account of the life insurance company issuing the contract, then the holder may be treated as the owner of those assets for federal income tax purposes. Whether such control is deemed to be exercised is determined by an assessment of all of the facts and circumstances in any situation, including a contract holder's ability to replicate the investment strategy of the separate account in which the variable contract is invested by investing directly in the funds and other assets in which the separate account, directly or indirectly, is invested. A restructuring of the GVIT ID Funds' investments predominantly to the GVIT Underlying Funds will definitively prevent a contract holder from being able to invest directly in the funds and other assets in which the separate account is invested.

The proposed restructuring, which would replace the GVIT ID Funds' investments in GMF Underlying Funds for shares of the GVIT Underlying Funds, would

---

<sup>5</sup> Specific types of other investors may also be permitted to purchase a fund's shares, but under considerably limited circumstances.

Douglas J. Scheidt, Esq.  
 December 29, 2006  
 Page 4 of 12

address both of these tax related issues and, therefore, will present on an on-going basis, fewer such issues that require monitoring. Monitoring will be unnecessary because the GVIT Underlying Funds are themselves adequately diversified and are only available for purchase, either directly or indirectly, by separate accounts of one or more insurance companies.

It therefore has been determined to be in the best interests of GVIT ID Funds' shareholders to reallocate investments by the GVIT ID Funds from the GMF Underlying Funds into the corresponding GVIT Underlying Funds. It is proposed that the GVIT ID Funds will redeem their interests from the GMF Underlying Funds and acquire shares of the corresponding GVIT Underlying Funds. Each GMF Underlying Fund and its corresponding GVIT Underlying Fund has the same investment objectives and policies, is managed in the same manner by the same portfolio manager(s), and, after completion of the transactions contemplated herein, has or will have substantially identical portfolio holdings.<sup>6</sup>

As of November 30, 2006, the GVIT ID Funds' current aggregate ownership in the GMF Underlying Funds was as follows:

<u>GMF Underlying Funds</u>	<u>GVIT ID Funds' Aggregate Ownership</u>
Gartmore S&P 500 Index Fund	38.0%
Gartmore Mid Cap Index Fund	42.9%
Gartmore International Index Fund	51.6%
Gartmore Small Cap Index Fund	43.9%
Gartmore Bond Index Fund	58.9%
Gartmore Enhanced Income Fund	62.1%

To avoid imposing adverse tax consequences and brokerage costs<sup>7</sup> on the remaining retail shareholders in the GMF Underlying Funds and brokerage costs on the GVIT Underlying Funds shareholders, Gartmore proposes to effectuate the transfer

<sup>6</sup> Since the index funds do not require full replication of the benchmark index's holdings in order to meet their respective objectives, there could be different securities to some extent between a GMF Underlying Fund and the corresponding GVIT Underlying Fund. More importantly, however, any security held by a GMF Underlying Fund would be an eligible investment for the corresponding GVIT Underlying Fund. In addition, the corresponding Funds may have different asset sizes and daily cash flows. We also note that each GMF Underlying Fund and the corresponding GVIT Underlying Fund will have the same expenses.

<sup>7</sup> Brokerage costs would not be an issue if the transactions contemplated herein were effected in reliance on Rule 17a-7 under the 1940 Act. However, that exemptive rule would not be beneficial for the reasons more fully discussed below.

Douglas J. Scheidt, Esq.  
December 29, 2006  
Page 5 of 12

through simultaneous in-kind redemptions and purchases ("Proposed Transactions"). Under the Proposed Transactions, the GVIT ID Funds would effect in-kind redemptions of their shares in the GMF Underlying Funds on a pro rata basis and use those portfolio securities to acquire shares of the corresponding GVIT Underlying Funds. The GMF Underlying Funds would effect the proposed in-kind redemptions in accordance with the conditions set forth in the staff's letter to *Signature Financial Group, Inc.* (Dec. 28, 1999) ("*Signature Letter*") and in conjunction with their procedures for redemptions in-kind, which require compliance with the *Signature Letter*. Consequently, we are not requesting relief concerning these transactions. Completion of the Proposed Transactions, however, would require the GVIT ID Funds, upon redemption from the GMF Underlying Funds, to make corresponding purchases of shares of the GVIT Underlying Funds using the in-kind redemption proceeds. It is the purchase in-kind transactions of shares of the GVIT Underlying Funds for which we are seeking no-action relief.

The Proposed Transactions between the GVIT Underlying Funds and the GVIT ID Funds will be conducted only under the following circumstances ("Proposed Procedures"), which are consistent with and based on the procedures set forth in the *GE Letter*:

1. An in-kind purchase or sale will not dilute the interests of the shareholders of the GVIT Underlying Funds or GVIT ID Funds;
2. The in-kind consideration accepted by a GVIT Underlying Fund will consist of securities that are appropriate, in type and amount, for investment by the GVIT Underlying Fund in light of its investment objectives and policies, and current holdings;
3. A GVIT ID Fund's in-kind consideration will consist only of the entire in-kind redemption proceeds obtained through the redemption of shares of the corresponding GMF Underlying Fund;
4. A GMF Underlying Fund and the corresponding GVIT Underlying Fund will have the same procedures for determining their net asset values, and will follow those procedures in determining the amount of redemption proceeds to be paid to the GVIT ID Fund upon the redemption in-kind transactions, and the amount of GVIT Underlying Fund shares to sell to a GVIT ID Fund, respectively. A GMF Underlying Fund and corresponding GVIT Underlying Fund will ascribe the same value to the in-kind consideration;
5. The in-kind redemptions and purchases will be effected simultaneously;
6. GVIT will effect the purchase in-kind transactions pursuant to procedures adopted by the Board on behalf of the GVIT ID Funds and the GVIT

Douglas J. Scheidt, Esq.  
December 29, 2006  
Page 6 of 12

Underlying Funds, including a majority of trustees who are not "interested persons" as defined in Section 2(a)(19) of the 1940 Act ("Independent Trustees"), that are reasonably designed to provide that the purchases in-kind are effected in a manner consistent with (1) through (5) above;

7. The Board of the GVIT ID and Underlying Funds, including a majority of Independent Trustees, will determine, within the seven days following the 30-day period immediately after completion of the in-kind purchases, that all in-kind purchases made by the GVIT ID Funds and all corresponding sales of Fund shares by the GVIT Underlying Funds: (a) were effected in accordance with these procedures; (b) did not favor a GVIT ID Fund to the detriment of any other shareholder of a GVIT Underlying Fund or favor a GVIT Underlying Fund to the detriment of a GVIT ID Fund; and (c) were in the best interests of such GVIT Underlying Fund and GVIT ID Fund;
8. GVIT will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the transaction occurs, the first two years in an easily accessible place, a copy of its in-kind purchase procedures, as well as other records for the purchase in-kind setting forth the identity of the GVIT ID Fund and the corresponding GVIT Underlying Fund, a description of the composition of the investment portfolios of the relevant GVIT Underlying Fund and GVIT ID Fund (including each asset's value) immediately prior to the purchase in-kind, a description of each security delivered in connection with the purchase in-kind, the terms of the in-kind purchase, the information or materials upon which the asset valuations were made, and a description of the composition of the investment portfolios of the relevant GVIT Underlying Fund and GVIT ID Fund (including each asset's value) 30 days after the in-kind transaction; and
9. Gartmore will, consistent with its fiduciary duties, disclose to the Independent Trustees of the GVIT Board the existence of, and all of the material facts relating to, any conflicts of interest between Gartmore and the GVIT Underlying Funds and between Gartmore and the GVIT ID Funds in the proposed transactions to allow the Independent Trustees to approve the in-kind transaction.

The procedures to be used to value the in-kind portfolio securities will be based on objective and verifiable valuation measures. The GMF Underlying Funds will value the securities for the in-kind redemption on the same day and at the same price that the GVIT Underlying Funds value the securities to be used in the in-kind purchase of its shares.

Douglas J. Scheidt, Esq.  
December 29, 2006  
Page 7 of 12

The Proposed Transactions will also satisfy all but three of the requirements of Rule 17a-7 under the 1940 Act, as interpreted by the staff of the Commission. First, the GVIT ID Funds and the GVIT Underlying Funds may be deemed affiliated by reasons other than sharing a common investment adviser, common trustees and/or common officers.<sup>8</sup> Second, the Proposed Transaction would not strictly involve cash-for-securities as required by Rule 17a-7(a).<sup>9</sup> Third, although all of the in-kind portfolio securities in the Proposed Transactions will be securities for which market quotes are readily available in accordance with Rule 17a-7(a), the pricing procedures would not follow precisely the methodology set forth in Rule 17a-7(b) in that the Proposed Transactions will use "net asset value" valuation procedures in determining the amount of redemption proceeds to be paid to the GVIT ID Funds upon the redemption in-kind transactions, and the amount of GVIT Underlying Fund shares to sell to the GVIT ID Funds, respectively. This would allow the GMF Underlying Funds and the GVIT Underlying Funds to effect these transactions with a minimum of disruption to current operations. In light of the various procedures that will accompany use of these valuation methods, as described above (including, particularly, the fact that the redemptions in-kind and purchases in-kind would be effected at the same prices), the use of these methods should not in any way result in disadvantages for the GMF Underlying Funds or GVIT Underlying Funds.<sup>10</sup>

### III. Issue Presented

Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company ("first-tier affiliate"), or any affiliated person of such person ("second-tier affiliate"), acting as principal, from knowingly selling securities or other property to the investment company. Section 17(a)(2) of the 1940 Act prohibits any first-tier affiliate or second-tier affiliate of a registered investment company, acting as principal, from knowingly purchasing securities or other property from the investment company (except securities of which the seller is the issuer).

Section 2(a)(3)(C) of the 1940 Act defines an "affiliated person" of another person as "any person directly or indirectly controlling, controlled by, or under common control with, such other person." The SEC staff has taken the position that where two investment companies share a common investment adviser, such companies may be

---

<sup>8</sup> See *infra* note 12.

<sup>9</sup> See, e.g., *Trust Funds Institutional Managed Trust* (Jul. 20, 1988); *Cash Accumulation Trust and Daily Accumulation Fund* (Nov. 30, 1984).

<sup>10</sup> We note that the staff, in the *GE Letter*, permitted the use of "net asset value" valuation procedures that were different from the procedures described in Rule 17a-7(b). See, also, *Trust Funds Institutional Managed Trust supra* note 9. The incoming letter in that case noted that shareholders would not be any worse off by use of "net asset value" procedures and, in fact, could in certain cases enjoy a windfall if Rule 17a-7(b) procedures were used instead to value the securities for making an in-kind purchase.

Douglas J. Scheidt, Esq.  
December 29, 2006  
Page 8 of 12

considered to be under common control and, therefore, first-tier affiliates of each other.<sup>11</sup> The GVIT ID Funds and the GVIT Underlying Funds, by virtue of having in common Gartmore, or an affiliate of Gartmore, as their investment adviser, may be considered to be under common control and, thus, first-tier affiliates of each other.<sup>12</sup>

The Proposed Transactions could implicate Section 17(a)(1) of the 1940 Act to the extent the GVIT ID Funds are deemed to be selling portfolio securities to the GVIT Underlying Funds. By its terms, Section 17(a)(1) does not apply to the following: (1) securities of which the buyer is the issuer,<sup>13</sup> or (2) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities.<sup>14</sup> Neither of these exemptions is available in the case of the sale of portfolio securities to the GVIT Underlying Funds. First, the GVIT ID Funds would not be selling shares issued by the GVIT Underlying Funds to the GVIT Underlying Funds (e.g., securities of which the buyer is the issuer). Second, the GVIT ID Funds would not be selling their own shares (e.g., securities of which the seller is the issuer) to the GVIT Underlying Funds (and the sales of these shares would not constitute a general offering to existing shareholders).

The Proposed Transactions also could implicate Section 17(a)(2) of the 1940 Act to the extent the GVIT Underlying Funds are deemed to be purchasing portfolio securities from the GVIT ID Funds. It is true that Section 17(a)(2) does not apply to "securities of which the seller is the issuer," and, therefore, the purchase by the GVIT ID Funds of shares issued by the GVIT Underlying Funds would not be prohibited by Section 17(a)(2). However, this exemption would not be available in the case of the Proposed Transactions since the GVIT Underlying Funds would be purchasing portfolio securities from the GVIT ID Funds rather than shares issued by the GVIT ID Funds.

---

<sup>11</sup> See *New England Mutual Life Insurance Co.* (June 3, 1987).

<sup>12</sup> The GVIT ID Funds also could be deemed first-tier affiliates of the GVIT Underlying Funds under Section 2(a)(3)(A) of the 1940 Act to the extent they own, control, or hold with power to vote, 5% or more of the outstanding voting securities of the GVIT Underlying Funds. In addition, the GVIT ID Funds and the GVIT Underlying Funds may be deemed to be common control affiliates by virtue of having the same Board of Trustees and the same principal underwriter.

<sup>13</sup> Section 17(a)(1)(A) of the 1940 Act.

<sup>14</sup> Section 17(a)(1)(B) of the 1940 Act. It also should be noted that Section 17(a)(1)(C) of the 1940 Act exempts "securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof." The Proposed Transactions will not pertain to any unit investment trust or periodic payment plan and, consequently, this exemption would not be available.



Douglas J. Scheidt, Esq.  
December 29, 2006  
Page 9 of 12

#### IV. Legal Analysis

The Proposed Transactions, as implemented under the Proposed Procedures, will not give rise to the self-dealing and overreaching concerns that Section 17(a) of the 1940 Act was designed to prevent. Indeed, the Proposed Transactions will permit remaining shareholders of the GMF Underlying Funds to avoid significant adverse tax consequences and brokerage costs that would be caused by cash redemptions from those Funds. In addition, the Proposed Transactions will be implemented in virtually the same manner as the in-kind purchases in the *GE Letter* where the staff granted Section 17(a) relief.

##### A. Proposed Transactions Are Consistent with Purposes of Section 17(a) of the 1940 Act

The Commission has observed that Section 17(a) of the 1940 Act was designed mainly to prohibit "a purchase or sale transaction when a party to the transaction has both the ability and the pecuniary incentive to influence the actions of the investment company."<sup>15</sup> Thus, Section 17(a) was designed to prevent self-dealing and other forms of overreaching of a registered investment company by its affiliates.<sup>16</sup> Accordingly, the staff stated in the *GE Letter* that a purchase in-kind transaction raises two core concerns underlying Section 17(a).<sup>17</sup> First, an affiliate may use its influence to cause the registered investment company to accept unwanted portfolio securities. Second, an affiliate may use its influence to cause the registered investment company to issue its shares to the affiliate in exchange for consideration (*i.e.*, securities) that is of lesser value than the shares issued. The Proposed Transactions, if conducted consistent with the Proposed Procedures, will not raise these concerns.

Under the Proposed Procedures, neither the GVIT ID Funds nor an affiliate could use their influence as affiliated persons to cause a GVIT Underlying Fund to accept unwanted portfolio securities. Similarly, neither the GVIT Underlying Funds nor an affiliate could use their influence as affiliated persons to overreach a GVIT ID Fund by selecting particular securities to be transferred as in-kind consideration. The in-kind consideration would be consistent, in type and amount, with each GVIT Underlying Fund's investment objectives and policies. The in-kind consideration would consist of the entire pro rata in-kind proceeds from the redemption of shares of the corresponding GMF Underlying Fund, which has the same investment objectives and policies, is

---

<sup>15</sup> See Investment Company Act Release No. 10886 (Oct. 2, 1979) (citing *Investment Trusts and Investment Companies*; Hearings on S. 3580 Before a Subcomm. Of the Senate Comm. on Banking and Currency, 76<sup>th</sup> Cong., 3d Sess., at 256-59 (1940)).

<sup>16</sup> See Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001).

<sup>17</sup> See *GE Letter*.

Douglas J. Scheidt, Esq.  
December 29, 2006  
Page 10 of 12

managed by the same manager in the same manner, and will, after completing the Proposed Transactions, have substantially identical portfolio holdings as the corresponding GVIT Underlying Fund. Moreover, the GVIT Board will review the in-kind purchases to ensure that, among other things, no GVIT Underlying Fund accepts unwanted portfolio securities.

In addition, in view of the protections provided by the Proposed Procedures, neither a GVIT ID Fund nor its affiliate could use their influence as affiliated persons to cause a GVIT Underlying Fund to issue its shares in exchange for in-kind consideration that was of lesser value than the shares. Likewise, neither a GVIT Underlying Fund nor its affiliate could use its influence as an affiliated person to cause a GVIT ID Fund to exchange its in-kind consideration for shares of a GVIT Underlying Fund that was of lesser value than the in-kind consideration. The Proposed Procedures that would be adopted by the Board focus on the proper and consistent valuation of the in-kind consideration by GVIT Underlying Funds and GMF Underlying Funds, require that the portfolio securities being tendered by a GVIT ID Fund to a GVIT Underlying Fund be valued at the same price as the GMF Underlying Fund has valued them and require a determination by the Board that the in-kind purchases do not favor any participating Fund or any other shareholders thereof. In addition, the Proposed Procedures require a GVIT Underlying Fund and the corresponding GVIT ID Fund to make and keep records relating to the in-kind purchase that would facilitate later review, as appropriate, of the in-kind purchases.

**B. Proposed Transactions Avoid Adverse Consequences for Shareholders**

We recognize that Rule 17a-7 under the 1940 Act exempts from the prohibitions of Section 17(a) certain purchase and sale transactions between registered investment companies. However, reliance on Rule 17a-7 would require cash consideration for the purchase and sale transactions. Realized sales of portfolio securities in the GMF Underlying Funds will result in significant adverse tax consequences for the remaining retail shareholders. Initial projections estimate that the aggregated capital gains for cash redemptions would be approximately \$250 million,<sup>18</sup> resulting in significant adverse tax consequences for the remaining shareholders of many of the GMF Underlying Funds. Therefore, we believe Rule 17a-7 would be an unworkable solution in light of the size of the redemptions and the nature of the capital gains that would be realized by the remaining GMF Underlying Funds' shareholders. By permitting the Proposed

---

<sup>18</sup> We note that this figure is an estimated projection of the aggregated capital gains calculated on or about May 1, 2006.

Douglas J. Scheidt, Esq.  
December 29, 2006  
Page 11 of 12

Transactions to be effected as described above, the remaining shareholders of the GMF Underlying Funds will avoid these adverse tax consequences.<sup>19</sup>

In view of the unsatisfactory nature of the Rule 17a-7 exemption for these purposes, only one remaining alternative would be available if the in-kind redemptions were not permissible, which is to conduct cash redemptions. Cash redemptions would require the GMF Underlying Funds to incur all the same adverse tax consequences, as well as significant brokerage costs to sell portfolio securities. Likewise, the GVIT Underlying Funds would also incur significant brokerage costs if the Underlying Funds were to receive cash and invest it in substantially similar portfolio securities. The Proposed Transactions would permit the Funds to avoid such adverse tax consequences and brokerage costs. Similarly, the in-kind purchases would benefit the GVIT ID Funds by allowing each GVIT ID Fund to avoid significant brokerage costs that would be incurred if it had to sell the in-kind consideration to realize the cash necessary to purchase shares of the GVIT Underlying Funds.

### C. Relevant Precedent

The requested relief is substantially similar to the relief granted in the *GE Letter*. As in the *GE Letter*, the Proposed Transactions involve an affiliated person's sale of portfolio securities to a registered investment company in exchange for the issuance of fund shares. The Proposed Procedures, which are virtually identical to the procedures set forth in the *GE Letter*, ensure that no affiliated person of a GVIT Underlying Fund would be in a position to overreach that Fund by causing it to accept unwanted portfolio securities in connection with a purchase in-kind transaction or at a disadvantageous price. The Proposed Procedures have been expanded to address the fact that each party to an in-kind purchase transaction is a registered investment company. Therefore, the Proposed Procedures require the Board to oversee the in-kind purchases on behalf of each GVIT ID Fund and each GVIT Underlying Fund.

As noted by the staff in the *GE Letter*, "a purchase in-kind transaction involving an investor that is itself a registered investment company may raise additional issues under Section 17(a)" of the 1940 Act.<sup>20</sup> We agree with the staff that, in addition to Section 17(a)(1), parts of the Proposed Transactions also implicate Section 17(a)(2). As discussed above, the GVIT Underlying Funds could be deemed to be "purchasing" portfolio securities from the GVIT ID Funds. Thus, since the portfolio securities are not

<sup>19</sup> Because the GMF Underlying Funds would satisfy the redemption requests through in-kind securities, capital gains would not be realized on the assets redeemed in-kind, but instead would transfer to the corresponding GVIT Underlying Funds upon their receipt of the in-kind assets. It should be noted that the GVIT Underlying Funds are used only as funding options in connection with tax-deferred variable insurance products.

<sup>20</sup> *GE Letter* at n. 13.

Douglas J. Scheidt, Esq.  
December 29, 2006  
Page 12 of 12

securities of which the GVIT ID Funds are the issuers, the proposed in-kind purchase of GVIT Underlying Fund shares may implicate the prohibitions of Section 17(a)(2). However, this factor, in and of itself, should not be grounds for denial of the requested relief because the concerns raised by Section 17(a)(2) are similar to the concerns raised by Section 17(a)(1) and are also addressed by the Proposed Procedures discussed above. The Proposed Procedures ensure that the GVIT Underlying Funds would not "purchase" any unwanted portfolio securities. As stated above, each GMF Underlying Fund and its corresponding GVIT Underlying Fund will have the same investment objectives and policies, be managed in the same manner by the same portfolio manager(s), and, after completion of the transactions contemplated herein, have substantially identical portfolio holdings. In addition, the proposed pricing and valuation procedures, as well as the simultaneous nature of the in-kind transactions ensure that the GVIT ID Funds will not be able to use their influence as affiliates to cause the GVIT Underlying Funds to issue their shares in exchange for in-kind consideration that is of lesser value than the shares issued.

**D. Consistent with Rule 17a-7 under the 1940 Act**

As discussed above, the Proposed Transactions will comply with substantially all of the requirements of Rule 17a-7 under the 1940 Act. There is added assurance, therefore, that the concerns giving rise to the prohibitions of Section 17(a) of the 1940 Act are not likely to occur under the Proposed Transactions.

**V. Conclusion**

For the foregoing reasons, we respectfully request that the staff agree not to recommend enforcement action to the Commission for a violation of Section 17(a) of the 1940 Act if GVIT were to accept the in-kind investment from GVIT ID Funds pursuant to the Proposed Transactions.

If the staff requires any further information in connection with this request, or believes it would be helpful to discuss any of these points, please call me at (202) 419-8407 or Peter M. Hong at (202) 419-8429.

Sincerely,

*Lawrence P. Stadulis/PS*

Stradley Ronon Stevens & Young, LLP  
Lawrence P. Stadulis