Security on the NASDAQ over-the-counter (OTC) Bulletin Board. The Board took such action in the best interest of the Issuer and its shareholders.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act [3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before May 23, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–11445 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26041; File No. 812–12900]

Manufacturers Investment Trust, et al.; Notice of Application

May 1, 2003.

AGENCY: Securities and Exchange Commission (the ''Commission'' or ''SEC'').

ACTION: Notice of Application pursuant to section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an order granting exemption from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(l5) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: Manufacturers Investment Trust (''MIT'') and Manufacturers Securities Services, LLC (''MSS'' or the ''Adviser'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of existing series of MIT (''Existing Funds'') and shares of Future Funds (as defined below) to be sold to and held by: (1) Separate accounts (''separate accounts'') funding variable life insurance contracts and variable annuity contracts (collectively, ''variable contracts'') issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans (''Qualified Plans'') (as defined below) outside of the separate account context; (3) the investment adviser or any subadviser to an Existing Fund or Future Fund (each, a ''Fund''; collectively, the ''Funds''), certain affiliated persons of each such adviser or subadviser and all other persons described in Treasury Regulation 1.817–5(f)(3)(ii) (collectively, ''Other Investors''); and (4) the general account of any Participating Insurance Company (as defined below), certain affiliated persons of each such Participating Insurance Company and all other persons described in Treasury Regulation 1.817–5(f)(3)(i) (collectively, the ''General Accounts'').

FILING DATE: The Application was filed on November 12, 2002 and amended on April 11, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 29, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interests, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o John W. Blouch, Esq., Jones & Blouch L.L.P., 1025 Thomas Jefferson St., NW., Suite 410 East, Washington, DC 20007–5252; copy to Betsy A. Seel, Esq., Assistant Vice President and Senior Counsel, Manulife Financial, 73 Tremont St., Boston, MA 02108–3915.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, at (202) 942–0670 (Division of Investment Management, Office of Insurance Products).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. *As used herein:* (a) A ''Future Fund'' is any investment company (or series thereof), other than an Existing Fund, that is designed to be sold to separate accounts and for which MSS or any affiliated person of MSS serves as investment adviser, subadviser, manager, administrator, principal underwriter or sponsor; (b) a ''Qualified Plan'' means any trust, plan, account, contract or annuity described in sections 401(a), 403(a), 403(b), 408(a), 408(b), 408(p), 408A, 414(d), 457(b), 408(k), or 501(c)(18) of the Internal Revenue Code of 1986, as amended (the ''Code''), and any other trust, plan, account, contract or annuity that is determined to be within the scope of Treasury Regulation 1.817–5(f)(3)(iii); and (c) a ''Participating Insurance Company'' means any insurance company that purchases or will purchase shares of the Funds to serve as the investment media for variable contracts issued through its separate accounts.

2. MIT is a Massachusetts business trust that is registered as an open-end management investment company under the Act. Under Massachusetts law and MIT's Agreement and Declaration of Trust, MIT is managed by its Board of Trustees. MIT is a series trust comprising sixty-seven Existing Funds, each of which has its own investment objectives and policies. MIT may add additional Funds in the future. Shares of MIT are registered under the Securities Act of 1933, as amended (the ''1933 Act''). Shares of MIT are not offered directly to the public but only to separate accounts of The Manufacturers Life Insurance Company (U.S.A.) (''Manulife USA''), a Michigan stock life insurance company, and The Manufacturers Life Insurance Company of New York (''Manulife New York''), a New York stock life insurance company (collectively, the ''Insurance Companies''), as the underlying investment media for variable contracts issued by such companies. The Insurance Companies are indirect, wholly-owned subsidiaries of The Manufacturers Life Insurance Company, a stock insurance company organized under the laws of Canada (''Manulife''). Manulife Financial Corporation (''MFC''), a publicly-traded company based in Toronto, Canada, is the holding company of Manulife and its subsidiaries, collectively known as

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

Manulife Financial. The separate accounts of the Insurance Companies include both separate accounts that are registered as investment companies under the Act (''registered separate accounts'') and separate accounts that are not registered as investment companies under the Act in reliance on the exemption provided by section 3(c)(11) of the Act.

3. MSS is a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). MSS is an indirect, wholly-owned subsidiary of Manulife USA. MSS currently serves as the investment adviser to MIT with respect to each of the Existing Funds. Pursuant to investment subadvisory agreements, MSS has retained a subadviser for each of the Existing Funds. Each such subadviser is registered as an investment adviser under the Advisers Act.

4. Applicants propose that the Existing Funds and Future Funds be authorized to offer their shares to separate accounts of Participating Insurance Companies in order to serve as the investment media for variable contracts issued through such separate accounts. Each separate account is or will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance law of such company's domicile. As such, the assets of each are or will be the property of the Participating Insurance Company, and that portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account is not or will not be chargeable with liabilities arising from any other business that the Participating Insurance Company may conduct. The income, gains and losses, realized or unrealized, from such an account's assets are or will be credited to or charged against the account without regard to other income, gains or losses of the Participating Insurance Company. If a separate account is a registered separate account, it will be a ''separate account'' as defined in Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust. For purposes of the Act, the Participating Insurance Company that establishes a registered separate account is the depositor or sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

5. The Funds will sell their shares to registered separate accounts only if the Participating Insurance Company sponsoring such a separate account enters into a participation agreement with the Fund. The participation agreements will define the relationship between each Fund and each Participating Insurance Company and provide that, except where the agreement specifically provides otherwise, the Participating Insurance Company will remain responsible for establishing and maintaining any separate account covered by the agreement and for complying with all applicable requirements of federal and state laws pertaining to such separate accounts and to the sale and distribution of variable contracts issued through such separate accounts. The participation agreements will also provide that the obligations of the Funds with regard to compliance with the federal securities laws will, unless the agreement specifically provides otherwise, relate solely to offering and selling their shares to the separate accounts covered by the agreements.

6. The use of a common management investment company (or series thereof) as an investment medium for both variable life insurance and variable annuity contracts of the same insurance company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as ''mixed funding.'' The use of a common management investment company (or series thereof) as an investment medium for variable life insurance and variable annuity contracts of two or more unaffiliated insurance companies is referred to herein as ''shared funding.''

7. Applicants propose that Existing Funds and Future Funds be authorized to offer and sell their shares directly to Qualified Plans, Other Investors and General Accounts. As stated above, Qualified Plans are pension or retirement plans within the scope of Treasury Regulation 1.817–5(f)(3)(iii). Other Investors will be persons described in Treasury Regulation 1.817–5(f)(3)(ii) which purchase Fund shares in connection with advances made in connection with the operation of separate accounts. General Accounts will be persons described in Treasury Regulation 1.817–5(f)(3)(i) which, if insurance companies, hold Fund shares in their general accounts.

8. Applicants state that they expect that most of the Qualified Plans will be pension or retirement plans intended to qualify under sections 401(a) and 501(a) of the Code and that many of these Plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under section 401(k) of the Code. The Plans that qualify under sections 401(a) and 501(a) of the Code will also be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), applicable to either defined benefit or defined contribution profit sharing plans, specifically ''Title I—Protection of Employee Benefit Rights.'' These Plans will thus be subject to regulatory provisions under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility and enforcement. Fund shares sold to Qualified Plans will be held by the trustees of such plans as required by section 403(a) of ERISA. Applicants state that pass-through voting is generally not required to be provided to participants in Qualified Plans pursuant to ERISA. Applicants note state that some of the Qualified Plans will not be subject to ERISA. These include governmental plans within the meaning of sections 414(d) or 457(b) of the Code, custodial accounts described in section 403(b) of the Code, and regular and Roth individual retirement accounts (''IRAs'') described in sections 408(a) and 408A of the Code, respectively. Generally, Fund shares sold to governmental plans will be held by trustees, those sold to custodial accounts will be held by custodians, and those sold to IRAs will be held by custodians or trustees on behalf of individual plan owners. Applicants state that pass-through voting is generally not required to be provided to participants in governmental plans, and voting rights in the case of custodial accounts and IRAs are generally exercised by individual participants or owners.

9. Applicants state that the current federal tax law permits the Funds to sell their shares to Qualified Plans, Other Investors and General Accounts. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in segregated asset accounts. The Code provides that a variable contract shall not be treated as an annuity or life insurance contract for any period (and any subsequent period) for which the investments, in accordance with regulations prescribed by the Treasury Department, are not adequately diversified. The Treasury Department has issued regulations (Treas. Reg. 1.817–5) (the ''Treasury Regulations'') that establish diversification requirements for the investment portfolios underlying variable contracts. The Treasury Regulations provide that, in order to rely on certain look-through

provisions of the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. The Treasury Regulations, however, also contain certain exceptions to this requirement. One exception allows shares in the investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by insurance company separate accounts. (Treas. Reg. 1.817–5(f)(3)(iii)). A second exception allows shares in the investment company also to be held by the investment manager of the investment company, and certain companies related to the investment manager, in connection with the creation or management of the investment company. (Treas. Reg. 1.817–5(f)(3)(ii)). Finally, a third exception allows shares in the investment company also to be held by the general account of a life insurance company that holds or will hold such shares in a separate account, and by certain companies related to the life insurance company. (Treas. Reg. 1.817–5(f)(3)(i)). These latter two exceptions are available only if: (1) The return on such shares held by the investment manager, the general account or the related company is computed in the same manner as the return on shares held by the separate accounts; and (2) the investment manager, the general account and the related company do not intend to sell such shares to the public. Applicants anticipate that the Other Investors and General Accounts will comply with the provisions of the Treasury Regulations when they purchase and hold shares of the Funds.

10. Applicants state that, as a result of these exceptions to the general diversification requirement, Qualified Plans may select the Funds as investment options, and the Other Investors and General Accounts may also hold shares of the Funds, without endangering the tax status of variable contracts issued through the separate accounts of Participating Insurance Companies.

11. The use of a common management investment company (or series thereof) as an investment medium for variable life insurance and variable annuity separate accounts and for Qualified Plans is referred to herein as ''extended mixed and shared funding.''

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e-2(b)(15) under the Act provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act. Section 9(a) provides that it is unlawful for any company to serve as an investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e-2(b)(15)(i) and (ii) provide partial exemptions from section 9(a), and Rule 6e-2(b)(15)(iii) provides a partial exemption from sections 13(a), 15(a), and 15(b) to the extent those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares.

2. The exemptions granted to a registered variable life insurance separate account by Rule 6e–2(b)(15) are available only when all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'', and then only when scheduled premium variable life insurance contracts are issued through variable life insurance separate accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying management company that also offers its shares (i) to a separate account of the same or an affiliated insurance company to fund variable annuity contracts or flexible premium variable life insurance contracts or (ii) to any separate account of an unaffiliated life insurance company. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans, Other Investors and General Accounts.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from section 9(a), and from sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections have been deemed by the Commission to require pass-through voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only when all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] 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, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account.'' Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. Rule 6e–3(T), however, does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect 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 life insurance separate accounts) of unaffiliated life insurance companies. In addition, Rule 6e–3(T) does not contemplate sales to Qualified Plans or Other Investors or, except in limited circumstances, General Accounts.

4. Applicants maintain, as discussed below, that there is no policy reason why the sale of Fund shares to Qualified Plans, Other Investors or General Accounts should prohibit or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(B)(15). Nonetheless, each of Rules 6e–2 and 6e–3(T) specifically provides that the relief granted thereunder is available only where shares of the underlying fund are offered exclusively to insurance company separate accounts (and, in the case of Rule 6e–3(T), to insurance companies for advances made in connection with separate account operations). In this regard, Applicants request exemptive relief to the extent necessary to permit shares of the Funds to be sold to Qualified Plans, Other Investors and General Accounts while allowing the variable life insurance separate accounts of the Participating Insurance Companies to enjoy the benefits of the relief granted by Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

5. Applicants submit that, if the Funds were to sell their shares only to Qualified Plans, Other Investors or General Accounts, no exemptive relief

under Rules 6e–2 and 6e–3(T) would be necessary. The relief provided for under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, Other Investors, General Accounts or to a registered investment company's ability to sell its shares to such purchasers. Applicants note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan, by Other Investors or by General Accounts without adversely affecting the ability of shares of the same investment company also to be held by separate accounts of insurance companies in connection with their variable contracts. Applicants submit that the sale of shares of the same investment company both to separate accounts and to Qualified Plans, Other Investors and General Accounts (other than, as permitted by Rule 6e–3(T), for advances in connection with separate account operations) was not contemplated at the time of the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants are not aware of any reason for excluding separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), or for excluding separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Similarly, Applicants are not aware of any reason for excluding separate accounts from the exemptive relief requested because the Funds may also sell their shares to Qualified Plans, Other Investors and General Accounts.

7. Applicants recognize that the reason the Commission did not grant broader relief in the area of mixed and shared funding when the Commission adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that the Commission's concern in this area is not warranted. Applicants have concluded that the addition of Qualified Plans, Other Investors and General Accounts as eligible shareholders in the Funds does not increase the risk of material irreconcilable conflicts among the shareholders. Applicants have further concluded that, even if a material irreconcilable conflict involving the Qualified Plans, Other Investors or General Accounts arose, such shareholders, unlike the separate accounts, could simply redeem their shares and make alternative investments.

8. Consistent with the Commission's authority under section 6(c) of the Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request relief for the class consisting of Applicants, the Participating Insurance Companies and their separate accounts investing in the Existing Funds and Future Funds and, to the extent necessary, investment advisers, subadvisers, principal underwriters, managers, administrators and sponsors of the Funds.

9. The Commission has previously granted the exemptive relief requested herein, including the class relief, in the context of mixed and shared funding and extended mixed and shared funding. The Commission has also granted such relief to permit sales of fund shares to investment managers and their affiliates (*i.e.*, Other Investors) and to the general accounts of life insurance companies holding fund shares in their separate accounts and the affiliates of such insurance companies (*i.e.*, General Accounts).

10. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

11. Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) provide, in effect, that the fact that an individual disqualified under section 9(a)(1) or section 9(a)(2) is an officer, director, or employee of an insurance company, or any of its affiliates, would not, by virtue of section 9(a)(3) of the Act, disqualify the insurance company or any of its affiliates from serving in any capacity with respect to an underlying investment company, provided that the disqualified individual did not participate directly in the management or administration of the underlying investment company.

12. Similarly, Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) provide, in effect, that the fact that any company disqualified under section 9(a)(1) or section 9(a)(2) is affiliated with the insurance company would not, by virtue of section 9(a)(3), disqualify the insurance company from serving in any capacity with respect to an underlying investment company, provided that the disqualified company did not participate directly in the management or administration of the investment company.

13. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9. These rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies funding separate accounts. These rules further recognize that it is also unnecessary to apply section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as funding media for variable contracts.

14. Applicants submit that there is no regulatory purpose in extending the section 9(a) monitoring requirements because of mixed or shared funding. The Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Those individuals who participate in the management or administration of the Existing Funds and, it is expected, of any Future Fund, will remain the same regardless of which separate accounts, insurance companies or Qualified Plans use such Funds. Applying the monitoring requirements of section 9(a) because of investment by separate accounts of other insurers would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners. With respect to Qualified Plans, they, unlike separate accounts, are not themselves investment companies and therefore are not subject to section 9(a) of the Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of a Fund except by virtue of its holding 5% or more of a Fund's shares. Finally, the relief requested should not be affected by the sale of shares of the Funds to Other Investors or to General Accounts. The eligibility restrictions of section 9(a) will still apply to any officers, directors or employees of Other Investors or Participating Insurance

Companies who participate directly in the management or administration of the Funds.

15. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a registered separate account. Pass-through voting privileges will be provided by Participating Insurance Companies with respect to all variable contract owners so long as the Commission interprets the Act to require pass-through voting privileges for variable contract owners.

16. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, 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 Rules 6e–2 and 6e–3(T)). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that, with respect to registered management investment companies whose shares are held by a registered separate account of an insurance company, the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such investment company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of the Rules).

17. Rules 6e–2 and 6e–3(T) recognize that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly has recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) undoubtedly were adopted in recognition of the same considerations.

18. Applicants state that, in addition, sales of shares of the Funds to Qualified Plans, Other Investors and General Accounts will not have any impact on the relief requested with respect to pass-through voting. Qualified Plans are not registered as investment companies under the Act, and there is no requirement to pass through voting rights to plan participants. For those Qualified Plans covered by ERISA, applicable law expressly reserves voting rights associated with the assets of most Plans to certain specified persons. Under section 403(a) of ERISA, shares of a fund sold to a Qualified Plan covered by ERISA must be held by the trustees of the Plan. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (2) when the authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the two exceptions stated in section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

19. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held by the Plan unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Plans in their discretion. Some ERISA-covered Qualified Plans, however, may provide for the trustees, an investment adviser or another named fiduciary to exercise voting rights in accordance with instructions from participants. For Qualified Plans that are not covered by ERISA, voting rights attributable to investment securities held by the Plans are exercised in accordance with the terms of governing plan documents. Such voting rights may be exercised, as under ERISA-covered Qualified Plans, by plan trustees in their discretion or pursuant to instructions from participants, or, in the case of custodial accounts or IRAs, by individual participants or plan owners.

20. When a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and plan investors with respect to voting a Fund's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts of interest with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

21. Even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in the Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed and shared funding. Unlike mixed and shared funding, plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

22. When a Qualified Plan does afford plan participants rights to give voting instructions, Applicants see no reason to believe that such participants generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage variable contract holders.

23. Other Investors and General Accounts similarly are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of any material irreconcilable conflicts with respect to voting is not present with respect to Other Investors and General Accounts.

24. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. At the time of the adoption of Rule 6e–2, therefore, the Commission staff contemplated underlying funds with public shareholders as well as variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly-available mutual fund and to affect the investment decisions of public shareholders.

25. For reasons unrelated to the Act, however, Internal Revenue Service Revenue Ruling 81–225 (September 25, 1981) effectively deprived most variable annuities funded by publicly-available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly-available mutual funds as investment media for variable contracts (including variable life contracts). Section 817(h) of the Code, in effect, requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' If a separate account is organized as a unit investment trust that invests in a single fund or series, then the separate account will not be diversified. In this situation, however, section 817(h) of the Code, in effect, provides that the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts.'' Accordingly, a unit investment trust separate account that invests solely in a publicly-available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any fund that sells shares to separate accounts, in effect, would be precluded from selling its shares to the public. Consequently, there will be no public shareholders of the Funds.

26. Applicants state that shared funding by unaffiliated insurance companies does not present any issues that do not already exist when a single insurance company is licensed to do business in several or all states. When insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in other states in which other insurance companies are domiciled. The fact that a single insurer and its affiliates offer their insurance products in different states does not create a significantly different or enlarged problem.

27. Applicants further state that shared funding by unaffiliated insurers is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For example, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer(s) will be required to withdraw their separate accounts' investment from the relevant Fund.

28. Applicants submit that the rights of an insurance company under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to disregard the voting instructions of contract owners do not raise any issues different from those raised by the authority of state insurance regulators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer may disregard the voting instructions of the contract owners only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser initiated by contract owners. 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.

29. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and could either preclude a majority vote approving the change or represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Fund's election, to withdraw its separate account's investment from the Fund, and no charge or penalty would be imposed as a result of such withdrawal.

30. Applicants state that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds funded only variable annuity contracts or variable life insurance policies, whether flexible or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. The Funds will not be managed to favor or disfavor any particular Participating Insurance Company or type of variable contract. There is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain variable life insurance and variable annuity contracts, will lead to different investment policies for different types of variable contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the differing insurance charges imposed, in effect, adjust any such differences and equalize the insurer's exposure in either case. No one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the Existing Funds and will facilitate the establishment of Future Funds serving diverse goals.

31. Applicants do not believe that the proposed sale of shares of the Funds to Qualified Plans, Other Investors and General Accounts will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In considering the appropriateness of the requested relief, Applicants have

analyzed a number of issues as discussed below to assure themselves that there are either no conflicts of interest or that there will exist the ability of affected parties to resolve the issues without harm to the contract owners in the separate accounts, the participants under the Qualified Plans, the Other Investors or the General Accounts.

32. Applicants considered whether any issues are raised under the Code or the Treasury Regulations or Revenue Rulings thereunder if Qualified Plans, Other Investors, General Accounts, variable annuity separate accounts and variable life insurance separate accounts all invest in the same underlying Fund. As discussed above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

33. Treasury Department Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which permits shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). A second such exception permits the investment manager and related companies also to invest in the underlying fund. (Treas. Reg. 1.817–5(f)(3)(ii)). A third such exception permits the general accounts of insurance companies, and related companies, also to invest in the underlying fund. (Treas. Reg. 1.817–5(f)(3)(i)). Thus, Treasury Regulations specifically permit qualified pension and retirement plans, investment managers and certain affiliates, insurance companies and certain affiliates and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code nor the Treasury Regulations or Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, Other Investors, General Accounts, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

34. Applicants note that, while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, the tax consequences of distributions from variable contracts and Qualified Plans do not raise any conflicts of interest with respect to the use of the Funds. When distributions are to be made, and the separate account or the Qualified Plan cannot net purchase payments to make the distributions, the separate account or the Qualified Plan will redeem shares of the affected Funds at their respective net asset values. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan. The life insurance company will surrender values from the separate account in order to make distributions in accordance with the terms of the variable contract.

35. Moreover, there is analogous precedent for a situation in which the same funding vehicle was used for contract owners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate accounts. A long-term capital gains tax was incurred in such separate accounts with respect to the reserves underlying non-qualified contracts but not with respect to the reserves underlying qualified contracts. A tax reserve at the estimated tax rate was established in the separate accounts affecting only the non-qualified reserves. To the best of Applicants' knowledge, this practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to separate accounts and Qualified Plans do not raise any material irreconcilable conflicts of interest with respect to the use of a Fund.

36. Applicants considered whether, and believe that, it is possible to provide an equitable means of giving voting rights to separate account contract owners, Qualified Plans, Other Investors and General Accounts. In connection with any meetings of shareholders, each Fund or its transfer agent will inform each shareholder, including each Participating Insurance Company (with respect to each of its separate accounts and its general account), Qualified Plan, Other Investor and General Account of its share ownership in the Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable. So long as the Commission interprets the Act as requiring Participating Insurance Companies to pass-through voting privileges to variable contract owners whose contracts are funded through registered separate accounts, each Participating Insurance Company will vote shares of a Fund held in its separate accounts in a manner consistent with voting instructions timely-received from contract owners and will vote shares of the Fund held in its separate accounts for which no voting instructions from contract owners are timely-received, as well as shares of the Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from contract owners are timely-received. MSS and its affiliates will vote their shares of a Fund in the same proportion as all variable contract owners having voting rights with respect to the relevant Fund or in such manner as may be required by the Commission or its staff. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights that are provided to Qualified Plans with respect to Fund shares would be no different from the voting rights that are provided to Qualified Plans with respect to shares of publicly-available funds.

37. Applicants considered whether a ''senior security,'' as such term is defined under section 18(g) of the Act, is created with respect to any variable contract owner as opposed to a plan participant under a Qualified Plan, an Other Investor or a General Account. Applicants concluded that the ability of the Funds to sell their shares directly to Qualified Plans, Other Investors and General Accounts does not create a senior security. A ''senior security'' is defined under section 18(g) of the Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' Applicants submit that, regardless of the rights and benefits of participants under Qualified Plans or contract owners under variable contracts, the Qualified Plans, separate

accounts, Other Investors and General Accounts have rights only with respect to their respective shares of the Fund. They only can redeem such shares at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

38. Applicants considered whether there are any conflicts between the contract owners of separate accounts and the participants under Qualified Plans, the Other Investors or the General Accounts with respect to the state insurance commissioners' veto powers (direct with respect to variable life and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders agree with a particular proposal. This does not mean that there are any inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, the trustees of Qualified Plans can quickly make the decision to redeem and then implement the redemption of their plans' shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments, or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that, even if there should arise issues where the interests of contract owners and Qualified Plans are in conflict, these issues can be resolved almost immediately in that the trustees of the Qualified Plans can, on their own, redeem shares out of the Funds. Other Investors and General Accounts can similarly redeem their shares out of the Funds and make alternative investments at any time.

39. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Separate Accounts and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contract owners of Participating Separate 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.

40. Applicants submit that permitting the sales of a Fund's shares to Other Investors and General Accounts in compliance with the Treasury Regulations will enhance Fund management without raising significant concerns regarding material irreconcilable conflicts. Section 14(a) of the Act generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares. Initial capital may also be necessary in connection with the creation of new series of shares and the voting of initial shares of such series on matters requiring shareholder approval. Potential sources of initial capital for a Fund are Other Investors or General Accounts. Any of these entities may have an interest in making the capital expenditure and in participating with the Fund in its organization. However, the provision of seed capital or the purchase of Fund shares by Other Investors or General Accounts may be deemed to violate the exclusivity requirements of Rule 6e–2(b)(15) or Rule 6e–3(T)(b)(1) under the Act.

41. Applicants anticipate that such investment in a Fund by Other Investors or General Accounts will be made in compliance with the Treasury Regulations. Given the conditions of Treas. Reg. 1.817–5(f)(3) and the harmony of interest between a Fund, on the one hand, and Other Investors and General Accounts, on the other, Applicants submit that little incentive for overreaching exists. Furthermore, such investment should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Rather, permitting investment by Other Investors or General Accounts will permit the orderly and efficient creation and operation of Funds.

42. Applicants state that various factors have limited the number of insurance companies that offer variable annuity and variable life insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom members of the public feel comfortable entrusting their investment dollars. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own.

43. Applicants believe that the use of the Funds as common investment media for variable contracts, as well as for Qualified Plans, would reduce or eliminate these concerns. Mixed and shared funding, including extended mixed and shared funding, also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise of the Funds' investment advisers and subadvisers, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result 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. Mixed and shared funding, and extended mixed and shared funding, also will result in a greater amount of assets available for investment by the Funds, thereby benefiting contract owners through greater diversification and by making the addition of Future Funds more feasible.

44. Applicants submit that, regardless of the type of shareholder in any of the Funds, the investment advisers and subadvisers are or will be contractually obligated to manage each Fund solely and exclusively in accordance with that Fund's investment objectives and restrictions as well as with any guidelines established by the Board of Trustees of MIT, or by the board of directors or trustees of any Future Fund that is not a series of MIT, as the case may be (each such board, together with the Board of Trustees of MIT, a ''Board''). With respect to each Fund, the investment advisers and subadvisers work with a pool of money and do not take into account the identity of the shareholders. Thus, the Existing Funds are, and any Future Fund will be, managed in the same manner as any other mutual fund.

45. Applicants see no significant legal impediment to permitting mixed and shared funding and extended mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account, and Applicants believe, as indicated above, that mixed and shared funding and extended mixed and shared funding will have no adverse federal income tax consequences.

46. Applicants note that the Commission has issued numerous orders permitting mixed and shared funding and extended mixed and shared funding as well as permitting sales of fund shares in such context to investment advisers, the general accounts of insurance companies and their affiliates. Applicants' proposal for mixed and shared funding and extended mixed and shared funding as well as sales of fund shares in such context to Other Investors and General Accounts complies in all material respects with the same conditions consented to by the applicants for such orders. Therefore, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of sections 9(a), 13(a), 15(a), or 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions

Applicants consent to the following conditions if the Commission considers them appropriate in granting the order requested herein:

1. A majority of the Board of each Fund will consist of persons (''directors'') who are not ''interested persons'' of that Fund (the ''Disinterested Directors''), as defined by section 2(a)(19) of the Act, and the rules thereunder, 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 director, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the directors; (b) for a period of 150 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 or by future rule.

2. Each Board will monitor each of its Funds for the existence of any material irreconcilable conflict between and among the interests of the contract owners of all separate accounts, the participants under the Qualified Plans, the Other Investors and the General Accounts investing in each such Fund and determine what action, if any, should be taken in response to such conflict. 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, no-action 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 Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. In the event that a Qualified Plan ever should become an owner of 10 percent or more of the assets of a Fund, such Qualified Plan will execute a fund participation agreement with that Fund which will include agreement to comply with the conditions set forth herein, to the extent applicable. A Qualified Plan will execute an application with each Fund that contains an acknowledgment of this condition at the time of the Qualified Plan's initial purchase of shares of such Fund.

4. Any Participating Insurance Company (on behalf of itself, its separate accounts, and any of its affiliates investing in a Fund), any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund, and any investment adviser or subadviser to a Fund which is an Other Investor (each on behalf of itself and any of its affiliates (other than a Participating Insurance Company) investing in the Fund) (collectively, the ''Participants'') will report any potential or existing conflicts to the Board of the relevant Fund. The Participants will be responsible for assisting the 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 includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard plan participant voting instructions. The responsibility to report such information and conflicts to and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in a Fund under their agreements governing participation in the Funds, and these agreements will provide that these responsibilities will be carried out with a view only to the interests of the contract owners and plan participants, as applicable.

5. If it is determined by a majority of the Board of a Fund, or a majority of its Disinterested Directors, that a material irreconcilable conflict exists with respect to that Fund, then the relevant Participant, at its own expense and to the extent reasonably practicable (as determined by a majority of the Disinterested Directors), will take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) In the case of a Participating Insurance Company, withdrawing the assets allocable to some or all of its separate accounts from the Fund and reinvesting such assets in a different investment medium, including another Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity contract owners or variable life insurance contract owners of the Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) in the case of a Qualified Plan, withdrawing the assets allocable to the Plan from the Fund and reinvesting such assets in a different investment medium, including another Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, or, if applicable, a decision by a trustee of a Qualified Plan to disregard plan participant voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company or Qualified Plan may be required, at the Fund's election, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of contract owners and plan participants, as applicable.

For purposes of this Condition 5, a majority of the Disinterested Directors will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will MIT, any Fund or MSS (or any other investment adviser to a Fund), as relevant, be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by the vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 5 to establish a new funding medium for the Plan if: (a) A majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline an offer to do so, or (b) pursuant to applicable law and governing plan documents, the Qualified Plan makes such decision without a vote of plan participants.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through registered separate accounts so long as the Commission continues to interpret the Act as requiring such pass-through voting privileges. Accordingly, each Participating Insurance Company, where applicable, will vote shares of a Fund held in its separate accounts in a manner consistent with voting instructions timely-received from contract owners. Each Participating Insurance Company will vote shares of a Fund held in its separate accounts for which no voting instructions from contract owners are timely-received, as well as shares of a Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from contract owners are timely-received. Each Participating Insurance Company will be responsible for assuring that each of its separate accounts investing in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies investing in that Fund. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in a Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in that Fund. Trustees of Qualified Plans will vote shares held by Qualified Plans in accordance with applicable law and governing plan documents.

8. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges to be provided to variable contract owners, MSS and any of its affiliates will vote their shares of any Fund in the same proportion as all variable contract owners having voting rights with respect to the relevant Fund or in such other manner as may be required by the Commission or its staff.

9. Each Fund will comply with all provisions of the Act requiring voting by shareholders (which for these purposes, will be the persons having a voting interest in shares of the relevant Fund), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although Existing Funds are not, and Future Funds will not be, the type of trust described in the section 16(c) of the Act), as well as with section 16(a) of the Act and, if and when applicable, section 16(b) of the Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

10. Each Fund will notify all Participating Insurance Companies and all Qualified Plans investing in the Fund that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) Shares of the Fund may be offered to insurance company separate accounts for both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatments and other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund may conflict; and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to any such conflict.

11. If, and to the extent that, Rule 6e–2 and Rule 6e–3(T) under the Act are amended, or proposed Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Funds and/or the Participating Insurance Companies, as appropriate, will take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T) as amended, or Rule 6e–3 as adopted, as such rules are applicable.

12. The Participants, at least annually, will submit to the Board of each relevant Fund such reports, materials, or data as such Board reasonably may request so that the Board may fully carry out the obligations imposed upon it by the conditions contained in this Application, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to the Board will be a contractual obligation under their agreements governing participation in the Funds.

13. All reports of potential or existing conflicts received by the Board of a Fund, and all action by the Board with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes or other appropriate records of the Board, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 23332, May 1, 2003.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, May 6, 2003, at 10 a.m.

CHANGE IN THE MEETING: Cancellation of meeting.