

NorthWestern Public Service division ("NPS") of NorthWestern holds ownership interests in the following electric utility assets: a 23.4% share of Big Stone Generating Plant, located near Big Stone City, South Dakota; a ten percent share of Coyote I Electric Generating Station, located near Beulah, North Dakota; and an 8.7% share of Neal Electric Generating Unit No. 4, located near Sioux City, Iowa. These facilities are operated by their other co-owners, and their output is dispatched by the MidContinent Area Power Pool. NorthWestern uses this plant to provide retail electric service to 108 communities in South Dakota, with a combined total population of 98,400 people. The company states that it also engages in limited wholesale electricity sales.

The NPS also holds nonexclusive municipal franchises to provide natural gas service in fifty-seven South Dakota and four Nebraska communities. Under these franchises, NorthWestern provides gas distribution services to approximately 81,000 customers.²

Applicant states that the South Dakota Public Utility Commission regulates its electric and gas utility operations, and its Nebraska gas distribution activities are regulated by the four Nebraska municipalities in which it operates.

By purchase and sale agreement dated September 29, 2000 ("Agreement"), NorthWestern agreed to acquire ("Acquisition") the gas, electric, and certain nonutility operations of Montana Power Company ("MPC"). Under the Agreement, MPC would transfer certain assets to a new limited liability company subsidiary, Montana Power LLC ("LLC"), and NorthWestern would acquire all of the membership interests of the LLC. The assets that MPC would transfer to the LLC include the following: (1) Milltown Dam, a three megawatt capacity hydroelectric facility; (2) its leasehold interest in Colstrip Unit 4, an electric generating plant located in Montana that is operated by a third-party; (3) certain electric transmission and distribution lines; (4) 2,000 miles of natural gas pipeline; and (5) three underground propane distribution systems that service the town of Townsend, the Big Sky Ski Resort, and the Anaconda Job Corps. MPC used

businesses; provides air conditioning, heating, duct-cleaning, and plumbing services; supplies, markets, and distributes propane, other natural gas liquids, crude oil, and natural gas to other resellers and end-users; markets electricity at market rates; and holds "non-material," passive investments in nonutility businesses related to those described above.

² Applicant states that approximately half of these customers are located in South Dakota, and the other half is located in Nebraska.

these assets to provide retail electric service to approximately 288,000 customers located in Montana and Wyoming,³ retail gas service to approximately 151,000 retail customers in Montana, and propane distribution service to the town of Townsend, the Big Sky Ski Resort, and the Anaconda Job Corps.

On February 14, 2002, NorthWestern filed the Application and, on February 25, 2002, NorthWestern acquired the LLC. By acquiring the LLC, Applicant became a "holding company" within the meaning of the Act. Applicant requests an order from the Commission granting the company an exemption from registration under section 3(a)(3) of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-3712 Filed 2-13-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration on the American Stock Exchange LLC (Star Struck, Ltd., Common Stock, \$1.00 par value) File No. 1-08912

February 10, 2003.

Star Struck, Ltd., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock, \$1.00 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on November 1, 2002 to withdraw the Issuer's Security from

³ Applicant states that the only electric service provided in Wyoming consisted of MPC's service of customers within Yellowstone National Park, which is located in both Montana and Wyoming.

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

listing on the Amex. The Board took such action at the advice of counsel since the Issuer had fewer than 500 shareholders of record and total assets not exceeding \$10,000,000 on the last day of each of the three most recent fiscal years and, by delisting its Security from the Amex, the Issuer could eliminate significant anticipated costs, including fees and expenses relating to the Amex's annual listing charges. In addition, the Board has considered the effect on the Issuer and on its shareholders of delisting and has determined that the benefit of delisting substantially outweighs any adverse effect on the Issuer or on its shareholders. The Issuer states that it is currently seeking a market maker for the Security.

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 Act³ shall not affect its obligation to be registered under section 12(g) of the Act.⁴

Any interested person may, on or before March 5, 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. 03-3718 Filed 2-13-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25930; File No. 812-12865]

TCW Premier Funds, et al.

February 10, 2003.

AGENCY: The Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order of Exemption under Section 6(c) of the Investment Company Act of 1940,

³ 15 U.S.C. 781(b).

⁴ 15 U.S.C. 781(g).

⁵ 17 CFR 200.30-3(a)(1).

as amended ("1940 Act") from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Applicants: TCW Premier Funds ("Trust") and TCW Investment Management Company ("TCW") (collectively, "Applicants").

Summary of Application: Applicants seek an order to permit shares of the Trust and shares of any other existing or future investment company that is designed to fund insurance products and for which TCW, or any of its affiliates, may serve as investment manager, investment adviser, subadviser, administrator, manager, principal underwriter or sponsor (the Trust and such other investment companies being hereinafter referred to, collectively, as "Insurance Trusts"), or permit shares of any current or future series of any Insurance Trust ("Insurance Fund"), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context ("Qualified Plans" or "Plans"); (3) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817-5 (collectively, the "Manager"); and (4) any insurance company that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817-5 ("General Accounts").

Filing Date: The Application was filed on August 9, 2002 and was amended and restated on October 18, 2002.

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 on the Application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on March 6, 2003 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-0690. Applicants, c/o Philip K. Holl,

Esq., Senior Vice President and Associate General Counsel, TCW Investment Management Company, 865 South Figueroa Street, Suite 1800, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Leland B. Erickson, Attorney, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (202-942-8090).

Applicants' Representations

1. The Trust is a Delaware business trust organized on July 16, 2002 and is registered as an open-end management investment company under the 1940 Act. The initial series of the Trust are TCW Premier Opportunity Fund and TCW Premier Value Opportunities Fund (the "Funds"). Additional series of the Trust and classes of the Funds and additional Insurance Funds may be established in the future.

2. TCW serves as the Trust's investment adviser. TCW was organized in 1987 as a wholly-owned subsidiary of The TCW Group, Inc. Société Générale Asset Management, S.A. may be deemed to be a control person of TCW by reason of its ownership of more than 25% of the outstanding voting stock of the TCW Group, Inc. Société Générale Asset Management, S.A., is a wholly-owned subsidiary of Société Générale, S.A.

3. The Insurance Trusts intend to offer shares of the Insurance Funds to (a) separate accounts of affiliated and unaffiliated insurance companies in order to fund variable annuity contracts and variable life insurance contracts (collectively, "Separate Accounts"); (b) Qualified Plans; (c) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817-5 (collectively, the "Manager"); and (d) any insurance company that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817-5 ("General Accounts").

4. Insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as "Participating Insurance Companies." The Participating Insurance Companies will establish their own separate

accounts and design their own contracts. Each Participating Insurance Company will have the legal obligation to satisfy all applicable requirements under both state and federal law. It is anticipated that Participating Insurance Companies will rely on Rules 6e-2 and 6e-3(T), although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well.

5. The Insurance Trusts intend to offer shares of the Insurance Funds directly to Qualified Plans outside of the separate account context. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans. Certain Qualified Plans, including section 403(b)(7) Plans and section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

6. Shares of each Insurance Fund also may be offered to the Manager or to General Accounts, in reliance on regulations issued by the Treasury Department (Treas. Reg. 1.817-5) that established diversification requirements for variable annuity and variable life insurance contracts ("Treasury Regulations"). Treasury Regulation 1.817-5(f)(3)(ii) permits such sales as long as the return on shares held by the Manager or General Accounts is computed in the same manner as for shares held by the Separate Accounts, and the Manager or the General Accounts do not intend to sell to the public shares of the Insurance Trust that they hold. An additional restriction is imposed by the Treasury Regulations on sales to the Manager, who may hold shares only in connection with the creation or management of the Insurance Trust. Applicants anticipate that sales in reliance on these provisions of the Treasury Regulations generally will be made to the Manager for the purpose of providing necessary capital required by section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 6(c) of the 1940 Act granting exemptions from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 6e-3(T)), to the extent necessary to permit shares of each Insurance Trust to be offered and sold to, and held by: (1) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) Qualified Plans; (3) any Manager to an Insurance Fund; and (4) General Accounts.

2. Section 6(c) authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust ("Trust Account"), Rule 6e-2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e-2(b)(15) are available only where each registered management investment company underlying the Trust Account ("underlying fund") offers its shares "exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *." (emphasis added). 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 fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding." In addition,

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 fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding." Moreover, because the relief under Rule 6e-2(b)(15) is available only where shares are offered *exclusively* to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans, the Manager or General Accounts.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e-3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e-3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more underlying funds which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible 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" (emphasis added). Therefore, Rule 6e-3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e-3(T) 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 an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. The relief provided by Rule 6e-3(T) is not relevant to the purchase of shares of the Insurance Trusts by Qualified Plans, the Manager or General

Accounts. However, because the relief granted by Rule 6e-3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans, the Manager or General Accounts.

5. The relief provided by Rule 6e-3(T) is not relevant to the purchase of shares of the Insurance Trusts by Qualified Plans, the Manager or General Accounts. However, because the relief granted by Rule 6e-3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans, the Manager or General Accounts. None of the relief provided for in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) relates to Qualified Plans, the Manager or General Accounts, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Trusts may themselves be investment companies that rely upon Rules 6e-2 and 6e-3(T) and wish to continue to rely upon the relief provided in those Rules, that the Applicants are applying for the requested relief. If and when a material irreconcilable conflict arises in the context of the Application between the Separate Accounts or between Separate Accounts on the one hand and Qualified Plans, the Manager or General Accounts on the other hand, the Participating Insurance Companies, Qualified Plans, the Manager and the General Accounts must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as an eligible investment option. Applicants have concluded that investment by the Manager or the inclusion of Qualified Plans and General Accounts as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans or General Accounts arose, the Qualified Plans or General Accounts, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, 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. Applicants thus argue that allowing the Manager, General Accounts or Qualified Plans to invest directly in the Insurance Trusts should not increase the opportunity for conflicts of interest.

6. Applicants assert that the Treasury Regulations made it possible for shares of an investment company to be held by a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares in the same investment company to also be held by separate accounts of insurance companies in connection with their variable life insurance contracts. Section 817(h) of the Internal Revenue Code of 1986 ("Code") imposes certain diversification standards on the underlying assets of separate accounts funding variable annuity contracts and variable life contracts. In particular, the Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the separate account investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. The Treasury Regulations provide that, in order to meet the 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 Treasury Regulations also contain certain exceptions to this requirement, one of which allows shares in an 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 to also be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817-5(f)(3)(iii)).

7. Applicants also assert that the Treasury Regulations contain another exception that permits the Insurance Funds to sell shares to General Accounts or the Manager subject to certain conditions (Treas. Reg. § 1.817-5(f)(3)(i), (ii)).

8. 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 a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares

in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, the sale of shares of the same investment company to separate accounts through which variable life insurance contracts are issued, to Qualified Plans, to the investment company's investment manager and its affiliates or General Accounts (collectively, "eligible shareholders") could not have been envisioned at the time of the adoption of Rules 6e-2(b)(15) and 6e-3(T)(b)(15), given the then-current tax law.

9. Paragraph (3) of section 9(a) provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for 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 (a)(2). Rule 6e-2(b)(15)(i) and (ii) and Rule 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 investment company. The relief provided by Rules 6e-2(b)(15)(i) and 6e-3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e-2(b)(15)(ii) and 6e-3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment manager or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) are participating in the management or administration of the fund. 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 to that which is appropriate in light of the policy and purposes of section 9. Those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in an insurance company complex, most of whom

typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Funds as the funding medium for variable contracts. There is no regulatory purpose in extending the monitoring requirements to embrace a full application of section 9(a)'s eligibility restrictions because of mixed funding or shared funding and sales to Qualified Plans, the Manager or General Accounts. Those Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Funds. Those individuals who participate in the management or administration of the Insurance Funds will remain the same regardless of which separate accounts, insurance companies, Qualified Plans or General Accounts use the Insurance Funds. Therefore, applying the monitoring requirements of section 9(a) because of investment by separate accounts of other Participating Insurance Companies would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. Moreover, the relief requested should not be affected by the sale of shares of the Insurance Trusts to Qualified Plans, the Manager or General Accounts. The insulation of the Insurance Trusts from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans, the Manager and General Accounts are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

10. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require "pass-through" voting with respect to underlying fund shares held by a separate account. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) under the 1940 Act provide partial exemptions from those sections to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances. Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A)(1) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted

to cause such underlying funds to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of such underlying funds or to approve or disapprove any contract between an underlying fund and its investment manager, 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 such Rules). Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(A)(2) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such underlying fund's investment policies, principal underwriter, or any investment manager (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of Rules 6e-2 and 6e-3(T)).

11. Rule 6e-2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it 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 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, Rule 6e-3(T)'s corresponding provisions presumably were adopted in recognition of the same factors. State insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts. Insurers generally assume both mortality and expense risks under variable annuity contracts.

Therefore, variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. The Commission staff has not addressed the general issue of state insurance regulators' authority in the context of variable annuity contracts, and has not developed a single comprehensive exemptive rule for variable annuity contracts.

12. The Insurance Trusts' sale of shares to Qualified Plans, the Manager or General Accounts will not have any impact on the relief requested herein in this regard. Shares of the Insurance Funds sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Similarly, the Manager and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, the Manager or General Accounts.

13. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different Participating Insurance Companies may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants further assert that shared funding by unaffiliated Participating Insurance Companies is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated Participating Insurance Companies, which Rules 6e-2(b)(15) and 6e-3(T)(b)(15) permit under various circumstances. Affiliated Participating Insurance Companies 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 discussed below are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

15. Applicants assert that the right under Rules 6e-2(b)(15) and 6e-3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e-2(b)(15) and 6e-3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. 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. However, a particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Trust's election, to withdraw its separate account's investment in that Insurance Trust, and no charge or penalty would be imposed as a result of such withdrawal.

16. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, the Manager or General Accounts. The transfer agent(s) for the Insurance Trusts will inform each shareholder, including each separate account, each Qualified Plan, the Manager and each General Account, of its share ownership, in an Insurance Trust. Each Participating

Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement. Investment by Qualified Plans or General Accounts in any Insurance Trust will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan or General Account choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans or General Accounts arises, the Qualified Plans or General Accounts may simply redeem their shares and make alternative investments. Votes cast by the Qualified Plans or General Accounts, of course, cannot be disregarded but must be counted and given effect.

17. Applicants assert that there is no reason why the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans and General Accounts (*i.e.*, long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

18. Furthermore, Applicants assert that 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 growth of the Insurance Trust. In addition, permitting mixed and shared funding will facilitate the establishment of additional series serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance Trust with a greater variety of investment objectives and policies.

19. Applicants note that section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817-5, which established diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, "qualified pension or retirement plans," "the general account of a life insurance company," "the manager * * * of an investment company" and separate accounts to share the same underlying management investment company. Therefore, neither the Code nor the Treasury Regulations thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts, the Manager and General Accounts all invest in the same underlying fund.

20. Applicants assert that the ability of the Insurance Trusts to sell their respective shares directly to Qualified Plans, the Manager or General Accounts does not create a "senior security," as such term is defined under section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Qualified Plan, the Manager or a General Account. As noted above, regardless of the rights and benefits of contract owners or Plan participants, the Separate Accounts, Qualified Plans, the Manager and the General Accounts have rights only with respect to their respective shares of the Insurance Trusts. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Trusts has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Applicants assert that permitting an Insurance Trust to sell its shares to the Manager in compliance with Treas. Reg. 1.817-5 will enhance Insurance Trust management without raising significant concerns regarding material irreconcilable conflicts. Applicants assert that, unlike the circumstances of many investment companies that serve as underlying investment media for

variable insurance products, the Insurance Trusts may be deemed to lack an insurance company "promoter" for purposes of Rule 14a-2 under the Act. It is anticipated that many other Insurance Trusts may lack an insurance company promoter. Accordingly, Applicants assert that such Insurance Trusts will be subject to the requirements of section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of \$100,000 upon making a public offering of its shares.

22. Applicants assert that given the conditions of Treas. Reg. 1.817-5(i)(3) and the harmony of interest between an Insurance Trust, on the one hand, and its Manager or a Participating Insurance Company, on the other, little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants assert that permitting investment by the Manager will permit the orderly and efficient creation and operation of Insurance Trusts, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Trust operations.

23. Applicants assert that various factors have limited the number of insurance companies that offer variable 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 Participating Insurance Companies as investment experts. In particular, 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. Use of the Insurance Trusts as a common investment medium for variable contracts, Qualified Plans and General Accounts would help alleviate these concerns, because Participating Insurance Companies, Qualified Plans and General Accounts will benefit not only from the investment and administrative expertise of TCW, or any other investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Trusts available for mixed and shared funding and permitting the purchase of Insurance Trust shares by Qualified Plans and General Accounts may 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. Mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Trusts. This may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Trusts, or by making the addition of new Insurance Funds more feasible.

Applicants' Conditions

Applicants consent to the following conditions:

1. A majority of the Board of Trustees or Board of Directors ("Board") of each Insurance Trust shall consist of persons who are not "interested persons" of the Insurance Trust, as defined by section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (1) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (2) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (3) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor the respective Insurance Trust for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, participants of Qualified Plans, the Manager or General Accounts investing in that Insurance Trust, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (1) An action by any state insurance regulatory authority; (2) 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; (3) an administrative or judicial decision in any relevant proceeding; (4) the manner in which the investments of any Insurance Fund are being managed; (5) a difference in voting instructions given by variable

annuity contract owners, variable life insurance contract owners, Plan trustees, or Plan participants; (6) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (7) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Trust, any Participating Insurance Company (on their own behalf, as well as by virtue of any investment of general account assets in all Insurance Trusts), and the Manager (collectively, "Participants") will report any potential or existing conflicts to the Board. Each of the Participants will be responsible for assisting the Board in carrying out the Board's 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 that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in an Insurance Trust under their agreements governing participation in the Insurance Trust, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, if applicable, Plan participants.

4. If it is determined by a majority of the Board of an Insurance Trust, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans shall, at their expense or, at the discretion of a Manager to an Insurance Trust, at that Manager's expense, and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (1) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Insurance Trust or any series therein and reinvesting such assets in a different investment medium

(including another Insurance Fund, if any); (2) in the case of Participating Insurance Companies, submitting the question of 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 one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (3) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Insurance Trust or any Insurance Fund and reinvesting those assets in a different investment medium; and (4) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Insurance Trust's election, to withdraw its Separate Account's investment in the Insurance Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Trust, to withdraw its investment in the Insurance Trust, and no charge or penalty will be imposed as a result of such withdrawal. 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 shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners or, as applicable, Plan participants.

For the purposes of this Condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Trust or its Manager(s) be required to establish a new funding medium for any variable contract. No

Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

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

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered Separate Account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participating Insurance Companies will vote shares of each Insurance Fund held in their registered Separate Accounts in a manner consistent with voting instructions timely received from such contract owners. Each Participating Insurance Company will vote shares of each Insurance Fund held in its registered Separate Accounts for which no timely voting instructions are received, as well as shares held by its General Accounts, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts investing in an Insurance Trust calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Trust's shares and to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in an Insurance Trust shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Trust. Each Plan will vote as required by applicable law and governing Plan documents.

7. An Insurance Trust will notify all Participating Insurance Companies and Qualified Plans that disclosure regarding potential risks of mixed and shared funding may be appropriate in

prospectuses for any of the Separate Accounts and in Plan documents. Each Insurance Trust shall disclose in its prospectus that: (1) Shares of the Insurance Trust are offered to insurance company separate accounts which fund both variable annuity and variable life insurance contracts, and to Qualified Plans and General Accounts; (2) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Trust and the interests of Qualified Plans or General Accounts investing in the Insurance Trust might at some time be in conflict; and (3) the Board will monitor the Insurance Trust for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of potential or existing conflicts, and all Board action 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 of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e-2 and Rule 6e-3(T) under the 1940 Act are amended, or Rule 6e-3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules 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 each Insurance Trust and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e-2 and Rule 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

10. Each Insurance Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Trust), and in particular each Insurance Trust will either provide for annual meetings (except insofar as the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in section 16(c) of the 1940 Act) as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, each Insurance Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) of the

1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Manager will vote its shares in the same proportion as all contract owners having voting rights with respect to the relevant Insurance Trust; provided, however, that the Manager or any General Account shall vote their shares in such other manner as may be required by the Commission or its staff.

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

13. If a Qualified Plan should become an owner of 10% or more of the assets of an Insurance Trust, the Insurance Trust shall require such Plan to execute a participation agreement with such Insurance Trust which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Trust.

Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,
Deputy Secretary.

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