

**MEMO# 23675**

August 4, 2009

## **SEC Issues No-Action Letter Related to Mixed and Shared Funding Orders**

[23675]

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TO: VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 14-09  
SEC RULES MEMBERS No. 84-09 RE: SEC ISSUES NO-ACTION LETTER RELATED TO MIXED AND SHARED FUNDING ORDERS

The Securities and Exchange Commission's Division of Investment Management has issued a no-action letter relating to "mixed and shared funding" exemptive orders for separate accounts funding variable life insurance ("VLI") contracts. [\[1\]](#) Specifically, the no-action letter clarifies that a fund would not have to comply with the terms and conditions of an existing exemptive order if it is not relying on the exemptions in the order. [\[2\]](#) Instead, a fund would comply with the terms of the Investment Company Act of 1940 ("Act"), including Sections 9(a), 13(a), 15(a) and 15(b).

By way of background, Rules 6e-2 and 6e-3(T) under the Act provide exemptive relief from various provisions of the Act (listed above) to separate accounts funding VLI contracts to permit those contracts to be offered and administered under the Act provided certain "exclusivity" provisions are met. The Commission routinely grants exemptive orders from the exclusivity provisions of Rule 6e-2 and 6e-3(T) to permit underlying funds to be offered to separate accounts funding variable annuity and VLI contracts of affiliated and unaffiliated issuers, to qualified plans, and to an underlying fund's investment adviser and its affiliates. These orders impose an elaborate set of conditions upon underlying funds, their advisers, and participating insurers to monitor for the existence of "material irreconcilable conflicts."

Heather L. Traeger

**endnotes**

[1] See Investment Company Act of 1940 – Sections 9(a), 13(a), 15(a) and 15(b); Maxim Series Fund, Inc., et al., Response of the Office of Insurance Products, Division of Investment Management, Securities and Exchange Commission, July 31, 2009, available at: <http://www.sec.gov/divisions/investment/noaction/2009/maximseries073109.htm>.

[2] See [Memorandum](#) to Variable Insurance Products Advisory Committee No. 11-08 and SEC Rules Members No. 21-08 [22311], dated March 10, 2008 (urging the Commission to eliminate the need for exemptive relief with respect to funds that underlie VLI contracts).

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