

MEMO# 22207

February 7, 2008

ICI Draft Letter to SEC on Mixed and Shared Funding Orders; Your Comments Requested by February 15

[22207]

February 7, 2008

TO: VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 9-08
SEC RULES COMMITTEE No. 12-08 RE: ICI DRAFT LETTER TO SEC ON MIXED AND SHARED
FUNDING ORDERS; YOUR COMMENTS REQUESTED BY FEBRUARY 15

The Institute has prepared a draft letter to the SEC in response to an SEC staff review of the current “mixed and shared funding” regulatory regime for separate accounts funding variable life insurance (“VLI”) contracts.

Please provide your comments on the draft letter as soon as possible but no later than February 15 to Heather Traeger by phone at (202) 326-5920 or by email at htraeger@ici.org.

The draft letter urges the Commission to eliminate the need for exemptive relief with respect to funds that underlie variable annuity (“VA”) and VLI contracts. Specifically, the draft letter recommends that the Commission (1) dispense with the mixed and shared funding exemptive order process for relief from the provisions of Sections 13(a), 15(a) and 15(b) of the Investment Company Act and (2) eliminate the conditions currently imposed in exemptive orders granting relief from Section 9 of the Act. To ensure a level playing field among industry participants, the draft letter recommends that the Commission publicly state that mixed and shared funding orders are unnecessary and funds with existing orders no longer need to comply with the conditions in those orders.

In the near term, the draft letter supports an SEC staff suggestion that it issue an interpretive letter (“staff letter”) stating that the original concerns regarding conflicts that could arise between the interests of VLI and VA contractholders are unwarranted. The draft letter recommends that the staff letter explain that underlying funds, their advisers and participating insurers, have not needed to rely upon the relief provided in the mixed and shared funding exemptive orders from Sections 13(a), 15(a) and 15(b) of the Act, but instead obtained them out of an abundance of caution. In addition, the staff letter should state that the Commission will not issue further exemptive orders, or amendments to existing exemptive orders, for this type of relief. The staff letter also should explain that relief from Section 9(a) of the Act will not require compliance with the currently imposed conditions and future exemptive orders under that section will not include those conditions.

In addition, the draft letter suggests that the staff letter state that a mixed and shared funding exemptive order is not required for, and will not be issued to, a fund underlying a VLI or VA account to offer its shares to a fund-of-funds or a qualified 529 Plan. Further, to provide comfort to the industry with respect to the proposed revised interpretation regarding the mixed and shared funding regulatory regime, the draft letter recommends that the staff letter address the implications, if any, of the interpretation on various issues such as participation agreements and other contractual documents between the participating insurer and the underlying fund.

As a long-term solution, the draft letter recommends that the Commission:

- pursue rulemaking to eliminate the need for exemptive relief under Sections 13(a), 15(a) and 15(b) of the Act with respect to open-end management investment companies that underlie VA contracts, VLI contracts, qualified pension plans, the underlying fund’s investment adviser or its affiliate, the insurer, funds-of-funds and 529 Plans;
- eliminate all of the conditions currently imposed in the mixed and shared funding exemptive orders for relief from Section 9(a) of the Act; and
- withdraw existing mixed and shared funding orders and consolidate Rules 6e-2 and 6e-3(T) to simplify the rules and eliminate the unnecessary distinctions between the VLI and VA regulatory regimes.

Heather L. Traeger
Assistant Counsel

[Attachment](#)

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.