UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
INVESTMENT MANAGEMENT

ACT ICA of 1940
SECTION
RULE 24f-2
PUBLIC
AVAILABILITY 6/20/95

June 20, 1995

Carl B. Wilkerson, Esq.
Senior Counsel
American Council of Life Insurance
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2599

Re: Payment of Filing Fees Under the Securities Act of 1933 by Investment Companies Funding Variable Insurance Contracts

Dear Mr. Wilkerson:

Enclosed is our response to your letter of April 14, 1995. By incorporating our answer into the enclosed photocopy of your letter, we avoid having to recite or summarize the facts involved.

In any future correspondence on this matter, please refer to our Reference No. IP-3-95.

Sincerely,

Brenda D. Sneed

Brenda D. Sneed
Assistant Director

Enclosures

PUBLIC

RESPONSE OF THE OFFICE OF
INSURANCE PRODUCTS
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. IP-3-95
American Council of
Life Insurance

Your letter dated April 14, 1995 asks the Division to clarify the application of Rule 24f-2 under the Investment Company Act of 1940 ("1940 Act") to certain two tier arrangements used in offering variable insurance contracts for sale to investors. 1/ Variable insurance contracts typically are offered through two tier arrangements in which contract premiums are pooled in an insurance company separate account, organized as a unit investment trust ("UIT"). The UIT separate account, which is not actively managed and acts as a conduit, invests these assets in an underlying management investment company ("Underlying Fund"). Both the UIT separate account and the Underlying Fund register as investment companies under the 1940 Act. Interests in the UIT and the Underlying Fund are registered under the Securities Act of 1933 ("1933 Act").

You state that, in addition to selling shares to affiliated registered separate accounts, Underlying Funds also may sell shares to: (1) separate accounts of unaffiliated insurance companies; (2) separate accounts that are exempt from registration under the 1940 Act, or whose interests are exempt from registration under the 1933 Act, or both; 2/ and (3) pension plans. 3/

Based on the facts presented, the Division would not object if an Underlying Fund calculates and pays 1933 Act registration fees pursuant to Rule 24f-2 under the 1940 Act based on all of its sales and redemptions of securities during the

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1/ Rule 24f-2 under the 1940 Act permits an investment company offering its shares continuously (such as a management investment company or a unit investment trust) to register an indefinite number of securities under the 1933 Act at the time of filing an initial registration statement. Thereafter, the company must register a definite amount of its securities by filing an annual Rule 24f-2 notice under the 1940 Act stating the securities sold in the past fiscal year. With the annual notice, the company must pay the appropriate filing fee calculated as prescribed by section 6(b) of the 1933 Act.

2/ Separate accounts may be exempt from registration under the 1940 Act if they are excluded from the definition of an investment company under either Section 3(c)(1) or Section 3(c)(11) of the 1940 Act. Section 3(c)(1) of the 1940 Act excludes private investment companies, and Section 3(c)(11) of the 1940 Act excludes certain stock bonus, pension and profit sharing trusts, from the definition of an investment company. Interests in separate accounts may be exempt from registration pursuant to Section 3(a) of the 1933 Act if the interest is issued under an insurance company contract offered in connection with certain stock bonus, pension, profit sharing, or annuity plans qualified under certain provisions of the Internal Revenue Code.

3/ Underlying Funds offering interests to insurance company separate accounts are permitted to offer interests to trustees of qualified pension or retirement plans without adversely affecting the status of the insurance contracts as annuity, life insurance or endowment contracts under Federal tax laws. Treas. Reg. §1.817-5(f)(3)(iii) (1989).

Underlying Fund's previous fiscal year 4/ except sales to and redemptions from insurance company separate accounts that issued securities on which registration fees were paid to the Commission pursuant to Section 6(b) of the 1933 Act.

Our position is expressly limited to facts and circumstances involving variable insurance contracts offered through a two tier arrangement, as discussed in your letter. Different facts or representations may require a different conclusion.

Brenda D. Sneed
Assistant Director
June 20, 1995

4/ We note that Rule 24f-2 does not contain a minimum $100 fee requirement, as does Section 6(b) of the 1933 Act.

American Council of Life Insurance

Carl B. Wilkerson
Senior Counsel

April 14, 1995

Brenda D. Sneed, Assistant Director
Office of Insurance Products
Division of Investment Management
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

RE: Application of Rule 24f-2 to Investment Company Shares Sold to Variable Contract Separate Accounts Organized as Unit Investment Trusts

Dear Ms. Sneed:

Thank you for inviting the Council's input on the development of new procedures for filing notices required by Rule 24f-2 under the Investment Company Act of 1940. On February 17, 1995, the Office of Insurance Products announced that the Commission did not object to a proposed action by an insurance company with variable contract separate accounts organized as unit investment trusts which invest in underlying investment companies to pay registration fees at only one tier of the two tier organizational structure.

The announcement indicated that "the Division [of Investment Management] advised the Commission that it believes that the proposed action [by the insurance company] is consistent with the Commission's practice of interpreting the fee requirements under the 1933 Act in analogous situations to prevent registrants from paying multiple fees on the same amount paid by investors." Additionally, the communique indicated that the "company's proposed action will provide consistent treatment for fees paid under a two-tier UIT separate account underlying fund structure and a one-tier separate account structure for funding variable insurance contracts. It will also be consistent with the treatment afforded public funds offered in a two-tier master/feeder arrangement." The announcement also recognized that other insurance companies "will follow the company's lead in paying registration fees under the 1933 Act as provided in Rule 24f-2" and limited the relief to two-tier structures where the underlying fund sells its shares exclusively to that company's separate accounts.

The life insurance industry greatly supports the elimination of duplicate registration fees as permitted in the February 17 communique. In discussions with Division of Investment Management staff over the past 18 months, the Council and several member companies recommended the development of relief from payment of registration fees at both tiers of a unit investment trust structure. We commend

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the SEC's responsiveness and flexibility in addressing this important matter. The action publicized on February 17 is a constructive first step in providing treatment parallel to other two-tier structures subject to the federal securities laws.

We recognize that the position announced on February 17 was limited to the facts presented to the SEC Commissioners for review. The efforts of your office to develop relief from duplicate registration fees for situations different from those presented to the Commission will make this issue more fully and equitably useful. Our industry greatly appreciates your efforts to interpret and apply the federal securities laws in a reasonable, evenhanded manner in recognition of evolving markets, competition, organizational structures, product design, and system developments. The Commission's action provides a prudent regulatory position concordant with the SEC's application of the securities laws concerning two-tier master/feeder arrangements.

A Revised Policy Position

The February 17 statement evidenced an operating principle, which we interpret to be (i) a registration fee should be paid not more than once for each dollar going into a variable contract funded by a registered separate account, irrespective of its organizational structure, and (ii) a uniform regulatory policy should apply under the federal securities laws concerning the payment of registration fees by functionally analogous entities. We also understand that the Office of Insurance Products staff informally clarified that the position announced on February 17 was further interpreted to require only the minimum $100 fee for underlying investment companies that sell their shares exclusively to UIT separate accounts of affiliated insurance companies that fund variable insurance contracts. We also understand that the February 17 position is not affected if an investment company sells shares to an insurer or its affiliates in connection with obtaining seed money for establishing the investment company.

Additional Fact Patterns That Should be Included Within the Scope of Interpretive Relief

Based upon the operating principle evidenced in the February 17 statement, the following list of factual situations should be entitled to equivalent regulatory relief. The list set forth below reflects the most common situations that exist for separate accounts organized as unit investment trusts. These examples are not, however, intended to present an exclusive list. Likewise, while we have used a format involving five examples, we assume that various conditions of these examples could exist in connection with a single underlying fund. There may be other examples which we have not identified, or new situations that will evolve in the future that should be equally entitled to relief. In these cases, registrants will continue to be able to seek clarification for situations that may develop or for situations not encompassed in the factual situations set forth below.

1. Arrangements where investment company shares are sold to UIT separate accounts funding variable contracts, including separate accounts excluded from the definition of investment company pursuant to either Section 3(c)(1) or Section 3(c)(11) of the Investment Company Act of 1940 and exempt from registration under the Securities Act of 1933.

2. Arrangements where investment company shares are distributed directly to pension plans in addition to any of the arrangements described in item one above.[1]

3. Arrangements where investment company shares are used to fund UIT separate accounts whether or not affiliated with one another or the investment company sponsor.

4. Arrangements where investment company shares which are used to fund UIT separate accounts that are subject to registration fees under the 1933 Act but are not themselves registered under the Investment Company Act.

5. Arrangements where investment company shares that are used to fund variable contract separate accounts that are not registered under the 1940 Act and where some, but not all, of the interests in the separate account are required to be registered under the 1933 Act.[2]

Equitable Solution

We recommend a solution that would fairly accommodate these arrangements within the spirit of the February 17 position and the principle evidenced therein. We suggest that companies be permitted to pay a $100 registration fee for investment company shares underlying registered separate accounts funding variable contracts together with an additional registration fee payment totaling 1/29 of 1% (or other fee required under Section 6(b) of the 1933 Act) of the fund assets attributable to shares that are issued in circumstances where no registration fee was paid on the funds used

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[1]It is the responsibility of the underlying investment company to compile accurate information regarding the number of its shares attributable to (i) participants whose interests are registered under the 1933 Act or 1940 Act, and (ii) participants whose interests are not registered under the 1933 Act.

[2]The situation described arises, for example, where Section 3(a)(2) of the 1933 Act exempts corporate pension plans from registration under the 1933 Act, while HR 10 plan interests in such a separate account are required to be registered under the 1933 Act. The responsibility for compiling information as described in footnote 1 would also apply to this fact pattern.

to purchase the investment company shares. We believe this fee payment proposal strikes a fair, rational balance consistent with the February 17 notice.[3]

* * * *

Thank you for inviting our input on this important matter, and your attention to our views. The industry greatly appreciates the noteworthy efforts of the Office of Insurance Products and the Division of Investment Management to shepherd this regulatory relief through to conclusion. If you have any questions concerning our submission, please call.

Sincerely,

Carl B. Wilkerson

Carl B. Wilkerson

CBW/pm

cc: Ms. Wendy Finck Friedlander

[3]Some of our members believe that by expanding the February 17th communique in this fashion the Commission will have avoided a situation where a regulatory position related to the payment of its registration fees could harm investors. Without the expanded relief, insurance companies may decide to restructure their underlying funds to exclude any shareholder who would trigger the payment of double registration fees for all shareholders. This contraction of the shareholder base would be inconsistent with the principles which motivated the Commission's staff to grant "mixed and shared" funding relief, such as attaining economies of scale.