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Person To Contact:

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CC:PSI:2  
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Date:  
October 15, 2007

LEGEND:

X =

Company 1 =

Company 2 =

Company 3 =

Company 4 =

Trust =

LLC =

State 1 =

State 2 =

Dear

This responds to a letter dated May 10, 2007, together with subsequent correspondence, submitted on behalf of X by X's authorized representatives, requesting entity classification rulings under §§ 7701 and 7704 of the Internal Revenue Code.

The information submitted states that X is the ultimate parent company of Company 1, Company 2, Company 3 and Company 4. Company 1 is a domestic life insurance company that issues variable annuity and variable life insurance contracts (Variable Contracts) in 49 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands. Company 2 is a domestic life insurance company that issues Variable Contracts in one state. Company 3 is a domestic life insurance company that issues Variable Contracts in 50 states and the District of Columbia. Company 4 is a domestic insurance company that issues Variable Contracts in 49 states and the District of Columbia (collectively the Insurance Companies).

Trust is a State 1 business trust organized under the laws of State 1. Trust is an open-end management investment company, registered under the Investment Company Act of 1940. The beneficial interest in Trust is divided into transferable shares. Under authority granted in Trust's Declaration of Trust, the trustees of Trust divide its shares into several portfolios or series of portfolios (Trust Portfolio). Each Trust Portfolio is separate from each other Trust Portfolio. Each Trust Portfolio is currently taxed as a separate regulated investment company (RIC) under § 851. With respect to any Trust Portfolio in existence prior to the effective date of §§ 301.7701-2 and 301.7701-3 of the Procedure and Administration Regulations, each trust was taxed as a corporation. With respect to any Trust Portfolio in existence on or after the effective date of §§ 301.7701-2 and 301.7701-3, each Trust Portfolio elected to be treated as an association taxable as a corporation for federal income tax purposes. Each Trust Portfolio that has filed a tax return has elected RIC status.

The Trust Portfolios may issue more than one class of shares. Currently, each of the Trust Portfolios issues one or more of 4 classes of shares and sells shares of its Trust Portfolios only to the following: (1) the Insurance Companies, to be held in their separate accounts which serve as the underlying investments for variable annuity and variable life insurance contracts (Variable Contracts) issued by such companies; (2) the Insurance Companies, to be held in their general accounts in a manner consistent with § 1.817-5(f)(3)(i) of the Income Tax Regulations; and (3) other Trust Portfolios of Trust. Trust does not offer its shares directly to the public.

Trust proposes to reorganize its business operations into LLC, which will be an open-end management investment company organized under the laws of State 2 as a series limited liability company (the Reorganization). Each Trust Portfolio will undergo the following steps to effectuate the Reorganization. Each Trust Portfolio will transfer its

assets to a corresponding LLC Portfolio in exchange for the membership interest in LLC Portfolio and LLC Portfolio's assumption of Trust Portfolio's liabilities. The Trust Portfolio will distribute in complete liquidation the LLC Portfolio's membership interest to the Trust Portfolio shareholders. Alternatively, Trust may be reorganized through a State 2 statutory conversion to effect the same result of a single LLC Portfolio holding the assets and liabilities of a corresponding single Trust Portfolio.

The beneficial interests in LLC's property will be divided into shares (Shares) in multiple segregated portfolios of assets (the LLC Portfolios), each with separate investments. LLC's operating agreement restricts both the transferability of Shares and the kind of persons which are eligible to be shareholders of LLC Portfolios. The LLC Portfolios will support the Insurance Companies' Variable Contracts. Immediately after the Reorganization, Shares of the LLC Portfolios will be held only by domestic life insurance companies, either directly or through separate accounts of such companies and by other LLC Portfolios.

Premiums received by the Insurance Companies for a Variable Contract are allocated to one of the segregated asset accounts (Separate Accounts) maintained by each of the Insurance Companies. Company 1 and Company 4 each maintain five Separate Accounts, Company 2 and Company 3 each maintain four Separate Accounts. These Separate Accounts are maintained for life insurance contracts, variable annuity contracts and group annuity contracts. The Separate Accounts maintained for variable life insurance contracts or variable annuity contracts, other than the group annuity contracts, are registered under the 1940 Act (Registered Accounts) and the offering of interests under the contracts funded in the Registered Accounts is registered under the Securities Act of 1933 (1933 Act). The Separate Accounts maintained for group annuity contracts are not registered under the 1940 Act and the offering of interests under contracts funded in those unregistered Separate Accounts is not registered under the 1933 Act.

The income, gains and losses from the assets of a Separate Account are credited to or charged solely against that Separate Account. Each Separate Account has subaccounts. After the Reorganization, each subaccount will invest solely in a single LLC Portfolio of LLC or in another investment option available under the Variable Contracts. The holder of a Variable Contract may specify in which subaccounts the premiums are to be invested. The benefits that one of the Insurance Companies pays to the contract holder are determined by reference to the investment return associated with, and the market value of, the relevant underlying investment options supporting the Variable Contract including the LLC Portfolios of LLC. However, the benefits under the Variable Contracts can vary significantly from the value of the Shares in the Portfolios, especially where a contract holder dies before his or her life expectancy. The contract holder is typically entitled to a minimum payment, regardless of the LLC Portfolio performance. Typically, a Variable Contract cannot be redeemed, within a specified period, without a penalty, nor sold at face value. Furthermore, the interests in a Portfolio are owned by the Insurance Company issuing the variable contract for federal

income tax purposes. The contract holder only has claims against the Insurance Company issuing the variable contract and not against the income, gains, losses or distributions of the Portfolios.

Each Trust Portfolio has elected to be treated as a separate RIC and one or more of the Insurance Companies and their Separate Accounts have invested in each of the Trust Portfolios. Some Trust Portfolios have more than one shareholder, while others have only a single shareholder. After the Reorganization, certain LLC Portfolios that have only a single shareholder will not elect to be taxed other than as an entity disregarded as separate from its owner (collectively Type D LLC Portfolios). If a Type D LLC Portfolio sells Shares to one or more additional owners, such LLC Portfolio will have two or more members and will not elect to be treated as an entity other than a partnership. Certain LLC Portfolios, each of which will have more than one member following the Reorganization (collectively Type P LLC Portfolios), will not elect to be treated as an entity other than as a partnership. Certain LLC Portfolios will elect to be treated as an association, taxable as a corporation for federal income tax purposes, effective on the date of formation, so that they may be taxed as RICs (collectively Type C LLC Portfolios).

X makes the following representations regarding Trust's current business operations and the future business operations of LLC after the Reorganization:

1. Trust is a business trust that has never held itself out to be a state law corporation. Each Trust Portfolio is currently a separate RIC as defined in § 851.
2. LLC will be a series limited liability company under State 2 law and will not hold itself out to be a state law corporation.
3. After the Reorganization of a Trust Portfolio that currently has only one shareholder into its corresponding Type D LLC Portfolio, such Type D LLC Portfolio will not elect to be treated as anything other than an entity disregarded as separate from its owner. If any Type D LLC Portfolios thereafter sell shares to one or more additional owners, such Type D LLC Portfolios will have more than one owner and will not elect to be classified as something other than a partnership. After the Reorganization of a Trust Portfolio that currently has two or more owners into its corresponding Type P LLC Portfolio, such Type P LLC Portfolio will not elect to be treated as an entity other than as a partnership. After the Reorganization of a Trust Portfolio into its corresponding Type C LLC Portfolio, such portfolio will elect to be classified as an association that will be taxable as a RIC for federal income tax purposes.

4. Following the Reorganization, LLC may, in the future establish and designate one or more additional LLC Portfolios. Any such additional LLC Portfolios will engage in the same business operations and satisfy the same representations as Types D, P or C LLC Portfolios.
5. If Shares are sold to other insurance companies, the Shares of each LLC Portfolio will not be held by more than 100 domestic life insurance companies.
6. Shares of each LLC Portfolio will be issued only to (i) the Separate Accounts of the Insurance Companies, (ii) the Separate Accounts of other domestic life insurance companies, (iii) other LLC Portfolios of LLC and (iv) other persons specified in § 1.817-5(f)(3)(i)-(iii).
7. Each of the Insurance Companies that purchases shares of an LLC Portfolio for its Separate Accounts and each of the other insurance companies that purchase Shares of an LLC Portfolio for its Separate Accounts will be treated as the owner of those Shares for federal income tax purposes.
8. The assets of the Registered Accounts of the Insurance Companies and of the Registered Accounts of the other insurance companies will satisfy the diversification tests of §§ 817(h) and 1.817-5(b).
9. Allocations of taxable income, gain, loss, deductions and credits of each Type P LLC Portfolio and each Type D LLC Portfolio, if shares in such Type D LLC Portfolio are sold to one or more additional owners, will be made in accordance with §§ 704(b) and 704(c). Except as required by § 704(c), each shareholder's allocable share of such Portfolio's income or loss will be comprised of a proportionate share of each item of income or loss of such Portfolio.
10. Each LLC Portfolio will consist of a separate pool of assets, liabilities and stream of earnings.
11. The shareholders of an LLC Portfolio may share in the income only of that LLC Portfolio.
12. The ownership interest of the shareholders of an LLC Portfolio will be limited to the assets of that LLC Portfolio upon redemption, liquidation, or termination of such LLC Portfolio.
13. The payment of the expenses, charges and liabilities of an LLC Portfolio will be limited to that LLC Portfolio's assets.

14. The creditors of an LLC Portfolio are limited to the assets of that LLC Portfolio for recovery of expenses, charges, and liabilities.
15. Each LLC Portfolio will have its own investment objectives, policies and restrictions.
16. Votes of shareholders may be conducted by each LLC Portfolio separately with respect to matters that affect only that particular LLC Portfolio, except to the extent the 1940 Act requires shares to be voted as a single class of shares.
17. The Shares of each LLC Portfolio are not, and will not be traded on an established securities market.
18. The Shares of each LLC Portfolio are not and will not be regularly quoted by any person, such as a broker or dealer, making a market in the Shares.
19. No person regularly makes available, and will not make available, to the public (including customers or subscribers) bid or offer quotes with respect to the Shares or stands ready, or will stand ready, to effect buy or sell transactions at the quoted prices for itself or on behalf of others.
20. No Shareholder has, or will have, a readily available, regular, and ongoing opportunity to sell or exchange the Shares through a public means of obtaining or providing information of offers to buy, sell or exchange Shares.
21. There is no plan or intention for the redemption of Shares by an LLC Portfolio to be combined with the issuance of Shares in the Portfolio to a new shareholder.
22. Shares of LLC are not transferable by any shareholder without first obtaining the consent of the Board of LLC. The Board cannot unreasonably withhold its consent to a proposed transfer. The Board however, can withhold its consent if it determines that the transfer may (i) result in a person who is not an Eligible Shareholder becoming a record or beneficial owner of the Shares, (ii) cause an LLC Portfolio to cease to be an entity to which § 1.817-5(f) applies, (iii) cause an LLC Portfolio to be treated as a publicly traded partnership as defined in § 7704(b), or (iv) result in a violation of the 1940 Act or the 1933 Act or other applicable law. Notwithstanding the foregoing, a shareholder is permitted to transfer Shares of which it is the record owner without first obtaining the consent of the Board if the transfer is made (i) to a successor that is an Eligible Shareholder and (ii) in connection with a

merger, consolidation, sale of substantially all assets or similar transaction to which the shareholder is a party.

X requests a ruling that after the Reorganization:

1. Each Type C LLC Portfolio will be classified as an association taxable as a RIC unless it makes an election to be treated otherwise.
2. Each Type D LLC Portfolio will be classified as an entity disregarded as an entity separate from its owner unless it makes an election to be treated otherwise.
3. Each Type P LLC Portfolio and each Type D LLC Portfolio, if Shares of the Type D LLC Portfolio are sold to one or more additional owners, will be classified as a partnership unless it makes an election to be treated otherwise.
4. Any additional portfolios established by LLC in the future, which will engage in the same business operations and satisfy the same representations of Type P, D or C LLC Portfolios will be properly classified as (i) a partnership if such portfolio has 2 or more owners, unless it makes an election to be classified otherwise, (ii) a disregarded entity if such portfolio has a single owner unless it makes an election to be treated otherwise or (iii) an association taxable as a corporation that will be treated as a RIC if it elects to be so treated unless it thereafter makes an election to be treated otherwise.
5. Each Type P LLC Portfolio and each Type D LLC Portfolio that is classified as a partnership will not be treated as a publicly traded partnership.

#### Entity Classification Rulings

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation (an eligible entity) under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) can elect its classification for federal tax purposes. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b) provides generally that unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or

(ii) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c) provides generally that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832.

Based solely on the facts and the representations submitted, we conclude as follows:

1. Provided that each Type D LLC Portfolio has a single owner and does not make an election to be treated otherwise, it will be disregarded as an entity separate from its owner.

2. Each Type P LLC Portfolio and each Type D LLC Portfolio, if shares in such Type D LLC Portfolio are sold to one or more additional owners, will be treated as a partnership, provided such portfolios do not make an election to be treated otherwise.

3. Provided that a Type C LLC Portfolio makes an election to be classified as an association taxable as a corporation for federal income tax purposes, such Type C LLC Portfolio will be classified as an association taxable as a corporation for federal income tax purposes, unless it thereafter makes an election to be treated otherwise. Each Type C LLC Portfolio will be taxed as a RIC after the Reorganization if it qualifies to be treated as a RIC under subchapter M of the Code.

4. Any additional portfolios established by LLC in the future, which will engage in the same business operations and satisfy the same representations of the Type P, D or C LLC Portfolios will be properly classified as (i) a partnership if such portfolio has 2 or more owners, unless it makes an election to be classified otherwise, (ii) a disregarded entity if such portfolio has a single owner unless it makes an election to be treated otherwise or (iii) an association taxable as a corporation that will be treated as a RIC if it elects to be so treated unless it thereafter makes an election to be treated otherwise.

#### Publicly Traded Partnership Ruling

Section 7704(a) provides that except as provided in § 7704(c), a publicly traded partnership will be treated as a corporation.

Section 7704(b) provides that the term “publicly traded partnership” means any partnership if (1) interests in such partnership are traded on an established securities market and (2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 1.7704-1(a)(2)(i) provides that for purposes of § 7704(b) and § 1.7704-1, an interest in a partnership includes (A) any interest in the capital or profits of the



partnership (including the right to partnership distributions); and (B) any financial instrument or contract the value of which is determined in whole or in part by reference to the partnership (including the amount of partnership distributions, the value of partnership assets, or the results of partnership operations).

Section 1.7704-1(a)(3) provides that for purposes of § 7704(b) and § 1.7704-1, a transfer of an interest in a partnership means a transfer in any form, including a redemption by the partnership or the entering into of a financial instrument or contract described in § 1.7704-1(a)(2)(i)(B).

Section 1.7704-1(c)(1) provides that for purposes of § 7704(b) and § 1.7704-1, interests in a partnership that are not traded on an established securities market (within the meaning of § 7704(b) and § 1.7704-1(b)) are readily tradable on a secondary market or the substantial equivalent thereof if, taking into account all of the facts and circumstances, the partners are readily able to buy, sell, or exchange their partnership interests in a manner that is comparable, economically, to trading on an established securities market.

Section 1.7704-1(c)(2) provides that for purposes of § 1.7704-1(c)(1), interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof if-- (i) Interests in the partnership are regularly quoted by any person, such as a broker or dealer, making a market in the interests; (ii) Any person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to interests in the partnership and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others; (iii) The holder of an interest in the partnership has a readily available, regular, and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing information of offers to buy, sell, or exchange interests in the partnership; or (iv) Prospective buyers and sellers otherwise have the opportunity to buy, sell, or exchange interests in the partnership in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of § 1.7704-1(c)(2).

Section 1.7704-1(d) provides that for purposes of § 7704(b) and § 1.7704-1, interests in a partnership are not traded on an established securities market within the meaning of § 1.7704-1(b)(5) and are not readily tradable on a secondary market or the substantial equivalent thereof within the meaning of § 1.7704-1(c) (even if interests in the partnership are traded or readily tradable in a manner described in § 1.7704-1(b)(5) or (c)) unless-- (1) The partnership participates in the establishment of the market or the inclusion of its interests thereon; or (2) The partnership recognizes any transfers made on the market by-- (i) Redeeming the transferor partner (in the case of a redemption or repurchase by the partnership); or (ii) Admitting the transferee as a partner or otherwise recognizing any rights of the transferee, such as a right of the transferee to receive partnership distributions (directly or indirectly) or to acquire an interest in the capital or profits of the partnership.

Section 1.7704-1(h)(1) provides that for purposes of section 7704(b) and this section, except as otherwise provided in § 1.7704-1(h)(2), interests in a partnership are not readily tradable on a secondary market or the substantial equivalent thereof if (i) all interests in the partnership were issued in a transaction (or transactions) that was not required to be registered under the 1933 Act; and (ii) The partnership does not have more than 100 partners at any time during the taxable year of the partnership.

Rev. Proc. 2007-3, § 3.01(65), 2007-1 I.R.B. 112, provides the Service will not issue a ruling on whether interests in a partnership that are not traded on an established securities market (within the meaning of § 7704(b) and § 1.7704-1(b)) are readily tradable on a secondary market or the substantial equivalent thereof under § 1.7704-1(c)(1). Rulings specifically pertaining to Portfolios supporting variable contract arrangements of life insurance companies do not fall within the intended scope of the no rule area.

The Shares in each Type P LLC Portfolio and each Type D LLC Portfolio, if shares in such Type D LLC Portfolio are sold to one or more additional owners, are interests in the capital or profits of the Portfolios. Therefore, the Shares are partnership interests for purposes of § 7704(b). See § 1.7704-1(a)(2)(i)(A). The sale of Shares to other insurance companies or to the Separate Accounts of other insurance companies does not fall within the definition of trading on an established securities market as defined in § 7704(b)(1) and § 1.7704-1(b). Additionally, Shares may only be sold to the Separate Accounts of the Insurance Companies, the Separate Accounts of other domestic life insurance companies, other LLC Portfolios of LLC and other persons specified in § 1.817-5(f)(3)(i)-(iii); and (i) are not regularly quoted by any person, such as a broker or dealer, making a market in the interests; (ii) no person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to the Shares and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others; (iii) the Share holder does not have a readily available, regular, and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing information of offers to buy, sell, or exchange interests in the partnership; or (iv) prospective buyers and sellers do not otherwise have the opportunity to buy, sell, or exchange Shares in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of § 1.7704-1(c)(2).

Based solely on the information submitted and the representations made, we conclude that, following the Reorganization, each Type P LLC Portfolio and each Type D LLC Portfolio that is classified as a partnership, will not be treated as a publicly traded partnership.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely yours,

Melissa C. Liquerman  
Senior Technician Reviewer, Branch 2  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter  
Copy for section 6110 purposes