



Dear \_\_\_\_\_ :

This is in response to the letter submitted by your authorized representative dated May 9, 2016, requesting a ruling that the investment assets of the Portfolios will not cause a Variable Contract holder to be considered the tax owner of the Portfolios and that each Portfolio will be eligible for the exception from the excise tax imposed by section 4982 of the Internal Revenue Code (the "Code").

## **FACTS**

### Trust

Trust is a State A statutory trust, which is registered with the Securities and Exchange Commission ("SEC") as an open-end management investment company under the Investment Company Act of 1940 ("1940 Act") and currently has multiple series, each with a different investment objective and strategy. Each series of Trust is or will be an insurance dedicated fund that is offered exclusively to insurance company segregated asset accounts to serve as an investment vehicle for life insurance and variable annuity contracts purchased by individuals. The life insurance companies whose segregated asset accounts hold shares of the series of Trust are life insurance companies within the meaning of section 816(a).

### Portfolio A, Portfolio B, and Portfolio C

Portfolio A, Portfolio B, and Portfolio C (collectively, the "Portfolios") are existing series of Trust. The shares of Portfolios are registered with the SEC under the Securities Act of 1933, as amended. Portfolio A, Portfolio B and Portfolio C have made or intend to make elections to be treated, (and intend to continue to qualify) as regulated investment companies under Subchapter M of the Code.

Each portfolio has a specific investment objective. Portfolios A and B intend to invest in equity and fixed income passive index regulated investment companies. These investments will be both series of the Trust and publicly available funds. Portfolio C intends to invest in fixed income securities through series of the Trust and publicly available funds.

Portfolio A proposes to allocate assets as follows: large cap U.S. stocks - d percent; U.S. fixed income securities - e percent; non-U.S. stocks - f percent; non- U.S. fixed income securities - g percent; and small- and mid-cap U.S. stocks - h percent. Portfolio

A will allocate approximately j percent of its assets to publicly available underlying funds.

Portfolio B proposes to allocate assets as follows: large cap U.S. stocks - j percent; U.S. fixed income securities - k percent; non - U.S. stocks - l percent; non-U.S. fixed income securities - m percent; and small- and mid-cap U.S. stocks - n percent. Portfolio B will allocate approximately o percent of its assets to publicly available underlying funds.

Portfolio C intends to invest in a mix of global fixed income securities. Upon commencement of operations, Portfolio C intends to invest approximately p percent of its assets in U.S. fixed income securities and approximately q percent of its assets in non-U.S. fixed income securities. Portfolio C intends to obtain this asset exposure by investing in underlying insurance dedicated funds or publicly available funds that seek to sample, but not replicate, the performance of third-party indices.

#### Ownership of Portfolios

The Portfolios are insurance dedicated funds that serve as investment vehicles for life insurance and variable annuity contracts purchased by individuals ("Variable Contracts"). Except as otherwise permitted by §1.817-5(f)(3) of the Income Tax Regulations, all shares of the Portfolios and of the Portfolio investments that are series of the Trust are held by segregated asset accounts underlying variable contracts of one or more life insurance companies. Each segregated asset account that will hold shares of a Portfolio will be a separate account registered with the SEC as a unit investment trust under the 1940 Act or will be exempt from registration under the 1940 Act. The life insurance companies whose segregated asset accounts hold shares of Portfolio are life insurance companies within the meaning of section 816(a). Except as otherwise permitted by §1.817-5(f)(3), public access to the Portfolios and to the Portfolio investments that are series of the Trust will be available exclusively through the purchase of a variable contract within the meaning of section 817(d).

#### Adviser

Adviser provides investment advisory services to Trust. Adviser is a State B corporation engaged in business as an investment manager. Adviser is a registered investment adviser under the Investment Advisers Act of 1940, as amended.

#### Variable Contracts

The Variable Contracts are variable contracts within the meaning of section 817(d). Although the terms of each Variable Contract may vary, various insurance companies will generally hold the premiums paid by a Variable Contract holder, net of any fees or

commissions, and any income earned on the net premiums in a segregated asset account. A Variable Contract holder will be able to allocate Variable Contract premiums and amounts held in the segregated asset account among several different investment options or subaccounts that correspond to the variable investment options under his or her Variable Contract. At least one subaccount will correspond to an investment in a particular Portfolio.

### Variable Contract Holders

All investment decisions concerning each Portfolio will be made solely by Adviser. A Variable Contract holder will not be able to direct a Portfolio's investment in any particular asset or asset class or recommend a particular investment or investment strategy, and there will not be any agreement or plan between Adviser and a Variable Contract holder regarding a particular investment of any Portfolio. The percentage of a Portfolio's assets invested in a particular fund will not be legally fixed in advance of any Variable Contract holder investment and will be subject to change by the Portfolio's Board, at any time. A Variable Contract holder will have no current knowledge of a Portfolio's specific asset composition. A Portfolio's holdings, however, will be available as permitted by the SEC, including in quarterly filings with the SEC, and annual and semi-annual report to shareholders.

A Variable Contract holder will have no legal, equitable, direct or indirect interest in any Portfolio asset. Rather, a Variable Contract holder will have only a contractual claim against the insurance company offering the contract to receive cash from the insurance company pursuant to the terms of the specific Variable Contract.

### The Portfolios' Diversification

The Portfolios will comply with the diversifications requirements of section 817(h) and §1.817-5(b).

## **RULING REQUESTED**

The investment assets of the Portfolios will not cause a Variable Contract holder to be considered the tax owner of such Portfolios and each Portfolio will be eligible for the exception from the excise tax imposed by section 4982.

## **LAW**

### Investor Control Rules

If the separate account assets underlying the variable contract are considered the assets of the life insurance company that issues the contract and not the property of the contract holder, section 817 governs the tax treatment of the contract. If the separate account assets underlying the contract are considered the assets of the contract of the contract holder, the contract holder is taxed on the income derived from the investment assets under section 61.

In general, the holder of legal title is the owner of the property and is taxed on the income derived from the property. However, if a person other than the holder of legal title possesses the “benefits and burdens” of ownership, that person is attributed ownership of property for tax purposes. See, e.g., Frank Lyon Company v. United States, 435 U.S. 561(1978); Helvering v. Clifford, 309 U.S. 331 (1940). The Supreme Court summarized this principle in Corliss v. Bowers, 381 U.S. 376, 378 (1930), stating that “taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed – the actual benefit for which the tax is paid.”

The Service applied these general tax ownership principles in a series of “investor control” rulings. Rev. Rul. 77-85, 1977-1 C.B. 12, Rev. Rul. 80-274, 1980-2 C.B. 27, Rev. Rul. 81-225, 1981-2 C.B.12, Rev. Rul. 82-54, 1982-1 C.B. 11, Rev. Rul. 2003-91, 2003-2 C.B. 347, and Rev. Rul. 2003-92, 2003-2 C.B. 350. The rulings stand for the proposition that contract holders possessing control over the investment of the separate account assets (in addition to the other benefits and burdens of the contract ownership) are the owners of separate asset assets for federal income tax purposes even if the insurance company retains possession of and legal title to those assets.

In Rev. Rul. 77-85, the Service concluded that if the contract holder of an “investment annuity” contract may select and control the investment assets in the separate account of the life insurance company, the contract holder is treated as the owner of those assets for federal income tax purposes and is taxed on the income derived from the investment assets. In the ruling, the individual contract holder of a variable annuity contract retained the right to direct the custodian of the account supporting that variable annuity to sell, purchase and exchange securities and other assets held in the custodial account. The contract holder also was able to exercise an owner’s right to vote account securities either through the custodian or individually. The Service found that the contract holder possessed “significant incidents of ownership” over the assets held in the custodial account, and thus, concluded that the policyholder was the owner of those assets for federal income tax purposes.

In Rev. Rul. 80-274, the contract holder transferred existing investment to an insurance company in return for an annuity contract and could withdraw all or a portion of the cash surrender value of the contract at any time prior to the annuity stating date. The Service, applying Rev. Rul. 77-85, concluded that the contract holder’s position was

substantially identical to what it would have been had the investment been directly maintained and established, and thus, the contract holder was the owner of the investment for federal income tax purposes.

In Rev. Rul. 81-225, the Service described four situations in which the contract holder is considered the owner of mutual portfolio shares held by insurance companies in connection with annuity contracts and one situation in which the insurance company is the owner of the mutual portfolio shares for federal income tax purposes. In the four situations in which the contract holder is considered the owner of the mutual portfolio shares, the shares are available for purchase other than through the purchase of an annuity contract. In those situations, the Service concluded that the contract holder has investment control over the mutual portfolio shares and that the contract holder's position in each situation was substantially identical to what it would have been had the mutual portfolio shares been purchased directly by contract holders. Conversely, in the situation in which the mutual portfolio shares were only available through the purchase of an annuity contract, the insurance company was the owner for federal income tax purposes.

In Rev. Rul. 82-54, the contract holder of certain annuity contracts could allocate premium payments among three portfolios and had an unlimited right to change those allocations prior to the maturity date of the annuity contract. Interests in the portfolios were not available for purchase by the general public, but instead were only available through the purchase of an annuity contract. The Service concluded that the purchaser's ability to choose among general investment strategies (for example, between stock, bonds, or money market instruments) either at the time of the initial purchase or subsequent thereto, did not constitute control sufficient to cause the contract holders to be treated as the owners of the mutual portfolio shares for federal income tax purposes.

In 1984, the Eighth Circuit addressed the tax ownership issue in the context of a variable annuity contract. Christoffersen v. United States, 749 F.2d 513 (8<sup>th</sup> Cir. 1984). The taxpayers, upon purchasing the contract, could allocate premiums among mutual Portfolios and could change the allocation at any time. The taxpayers bore the full investment risk and could withdraw any and all of the investment upon seven days' notice. In addition, the taxpayer was not required to exercise the annuity feature of the contract. The Eighth Circuit concluded that the taxpayers "surrendered few of the rights of ownership or control over assets of the subaccount." Id. at 515. The court held for federal income tax purposes, the taxpayers, not the issuing insurance company, owned the mutual portfolio shares that funded the variable annuity and, thus, the taxpayers were required to include in gross income any gains, dividends, or other income derived from the mutual portfolio shares.

In Rev. Rul. 2003-91, the Service concluded that the variable contract holder did not have sufficient control over segregated account assets to be deemed the owner of the assets. The variable contract was funded by a separate account that was divided into twelve subaccounts. Each subaccount offered a different investment strategy. Interests in the subaccounts were available solely through the purchase of a variable life or variable annuity contract that qualified under section 817(d). The investment activities of each subaccount were managed by an independent investment adviser. There was no arrangement, plan, contract, or agreement between the contract holder and the issuing insurance company or between the contract holder and the independent investment adviser regarding the availability of a particular subaccount, the investment strategy of any subaccount, or the assets to be held by a particular subaccount. Other than a contract holder's right to allocate premiums and transfer funds among the available subaccounts, all investment decisions concerning the subaccounts were made by the issuing insurance company or the independent investment adviser in their sole and absolute discretion. A contract holder had no legal, equitable, direct, or indirect interest in any of the assets held by a subaccount but had only a contractual claim against the issuing insurance company to collect cash in the form of death benefits or cash surrender values under the contract. The Service concluded that, based on all of the facts and circumstances, the contract holder did not have direct or indirect control over the separate account or any subaccount asset, and therefore the contract holder did not possess sufficient incidents of ownership over the assets supporting the variable contracts to be deemed the owner of the assets for federal income tax purposes.

In Rev. Rul. 2003-92, the purchasers of variable annuity and variable life insurance contracts were able to allocate their premiums among ten different subaccounts. Each sub-account invested in a partnership. In the factual scenario in which the partnership interests were available other than through the purchase of a variable annuity or life insurance contract, the Service concluded that the contract holders were the owners of the interests in the partnerships. In contrast, if the partnership interests were only available through the purchase of a variable or life insurance contract, the Service concluded that the insurance company was the owner of the interests in the partnerships.

### Section 4982

Section 4982(a) imposes a tax on every regulated investment company for each calendar year equal to 4 percent of the excess (if any) of – (1) the required distribution for such calendar year, over (2) the distributed amount for such calendar year.

Section 4982(f)(2) and (f)(4) provides exemptions from the excise tax for any calendar year if at all times during such calendar year each shareholder in such company was a segregated asset account of a life insurance company held in connection with variable

contracts (as defined in section 817(d)) or another regulated investment company described in section 4982(f).

### **ANALYSIS**

In the revenue rulings and the cases discussed above, the Service took the position that if the holder of a variable life insurance policy or variable annuity contract possesses sufficient incidents of ownership over the assets supporting the policy or contract, the contract holder is viewed for federal income tax purposes as the owner of the underlying assets and, as a result, is currently taxed on any income and gains attributable to the underlying assets. The determination of whether the holder of a variable life insurance policy or variable annuity contract possesses sufficient incidents of ownership over the assets of the separate account underlying the variable life insurance contract or variable annuity contract depends on all the relevant facts and circumstances. See Rev. Rul. 2003-91.

In the present case, the Variable Contract holders do not have any control of the investments of the Portfolios, including the respective Portfolio's investment in public available funds. The investment decisions of the Portfolios are made by Adviser in its sole and absolute discretion and are subject to change without notice to or approval by the Variable Contracts holders. The Variable Contract holders in this case do not have any more control over the assets held under their contract than was the case in Rev. Rul. 82-54 or Rev. Rul. 2003-91. The Portfolios are not an indirect means of allowing a Variable Contract holder to invest in public funds.

### **CONCLUSION**

Based on the representations and facts presented, each of Portfolio A, B and C's investments will not cause the Variable Contract holders to be treated as the owners of a Portfolio for federal income assets purposes and each Portfolio will be eligible for the exception from the excise tax imposed by section 4982.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty or perjury statement executed by an appropriate party. This office has not verified any of the material

PLR-115351-16  
PLR-115352-16  
PLR-115353-16

9

submitted in support of the request for rulings and it is subject to verification on examination.

In accordance with a power of attorney on file in the office, copies of this letter are being sent to your authorized representatives.

Sincerely,

James A. Polfer  
Senior Technician Reviewer, Branch 4  
(Financial Institutions & Products)

cc: