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December 27, 2001

4-51

1933 Act/Section 5 and Rule 145  
1940 Act/Sections 8 and 11

William J Kotapish, Esq.  
Assistant Director  
Office of Insurance Products  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N W.  
Washington, D.C. 20549-0506

Act	Section	Rule	Public Avail. Date	12/27/01	0107200101
1933	5(a)	145			
1933	Form N-4	—			
1933	Form S-6	—			
1940C	8	—			
1940C	11	—			
1940C	Form N-4	—			
1940C	Form N-8B-2	—			

Re: The Manufacturers Life Insurance Company (U.S A.)  
The Manufacturers Life Insurance Company of America  
The Manufacturers Life Insurance Company of North America

Dear Mr. Kotapish:

We are writing on behalf of The Manufacturers Life Insurance Company (U.S.A.) ("ManUSA"), The Manufacturers Life Insurance Company of America ("ManAmerica") and The Manufacturers Life Insurance Company of North America ("MNA"), which propose to combine their operations by having (i) MNA merge into ManUSA and (ii) ManAmerica transfer substantially all its assets and liabilities to ManUSA (together, the "Reorganization"). The purpose of this letter is to ask the Staff to advise us that it would not recommend that the Securities and Exchange Commission (the "Commission") take any enforcement action under various sections of the Securities Act of 1933, as amended (the "1933 Act"), and the Investment Company Act of 1940, as amended (the "1940 Act"), and Rule 145 under the 1933 Act, if, in connection with the Reorganization and in the manner described below, ManAmerica and MNA transfer, intact, each of their separate accounts registered under the 1940 Act (the "Separate Accounts") to ManUSA, with ManUSA succeeding ManAmerica and MNA as co-issuer with their respective Separate Accounts of all the variable annuity and variable life insurance contracts funded by the Separate Accounts (the "Contracts") and as depositor of the Separate Accounts (the "Transfer"). As discussed below, those transactions are subject to usual regulatory and stockholder approvals, but the owners of the Contracts (the "Contract Owners") will have no right to opt-out of, vote on or otherwise consent to any of the transactions and therefore will not have any investment decision to make with respect to the Transfer or any other aspect of the Reorganization.

ManAmerica has issued one Contract with a fixed annuity option and a market value adjustment provision which it registered under the 1933 Act, File No. 33-57020 (the "ManAmerica Registered MVA Contract") MNA has issued one fixed annuity contract with a market value adjustment provision which it registered under the 1933 Act, File No. 333-6011 (the "MNA Registered MVA Contract") As a result of the Reorganization, ManUSA will also succeed to the obligations of ManAmerica and MNA under the ManAmerica Registered MVA Contract and the MNA Registered MVA Contract (collectively, the "Registered MVA Contracts") We are therefore also requesting the Staff to advise us that it would not recommend that the Commission take any enforcement action under Section 5 of the 1933 Act and Rule 145 thereunder if, in the manner described below, each of ManAmerica and MNA transfers to ManUSA assets equal to its reserves and other liabilities under the Registered MVA Contracts, and ManUSA assumes all the obligations and responsibilities of ManAmerica and MNA under the Registered MVA Contracts (the "Fixed Account Transfer").

## ***I. Background***

### ***A. ManUSA***

ManUSA is a stock life insurance company incorporated in Maine on August 20, 1955 and re-domesticated under the laws of Michigan on December 30, 1992. Its home office is located at 38500 Woodward Avenue, Bloomfield Hills, Michigan 48304. ManUSA is a licensed life insurance company in the District of Columbia and all states of the United States except New York. ManUSA currently has one registered separate account which is described below. At December 31, 2000, ManUSA had approximately \$28.3 billion in general and separate account assets on a statutory basis.

ManUSA is an indirect, wholly-owned subsidiary of Manulife Financial Corporation ("MFC") which has its headquarters in Toronto, Canada. MFC's common stock is publicly traded and is listed on the New York Stock Exchange in the United States. MFC is the holding company of The Manufacturers Life Insurance Company ("Manulife") and its subsidiaries, collectively known as Manulife Financial.

### ***B. ManAmerica***

ManAmerica is a stock life insurance company organized under the laws of Pennsylvania on April 11, 1977 and re-domesticated under the laws of Michigan on December 9, 1992. Its statutory home office is located at 38500 Woodward Avenue, Bloomfield Hills, Michigan 48304. ManAmerica is a direct, wholly-owned subsidiary of ManUSA. ManAmerica is a licensed life insurance company in the District of Columbia and all states of the United States except New York. ManAmerica currently has four registered separate accounts which are described below. At December 31, 2000, ManAmerica had approximately \$1.6 billion in general and separate account assets on a statutory basis.

**C. MNA**

MNA is a stock life insurance company incorporated in Delaware on August 1, 1979. Its principal executive offices are located at 500 Boylston Street, Boston, Massachusetts 02116. MNA is a direct, wholly-owned subsidiary of Manulife-Wood Logan Holding Co., Inc. ("MWLH"). MWLH is an indirect, wholly-owned subsidiary of Manulife and a direct, wholly-owned subsidiary of ManUSA. MNA is a licensed life insurance company in all states except New Hampshire and New York. MNA currently has two registered separate accounts which are described below. At December 31, 2000, MNA had approximately \$15.8 billion in general and separate account assets on a statutory basis.

**D. Other Companies**

Except as noted below, the Separate Accounts invest only in series of Manufacturers Investment Trust ("MIT"), a no-load, open-end management investment company registered under the 1940 Act. MIT was originally organized on August 3, 1984.<sup>1</sup>

The investment adviser for MIT is Manufacturers Securities Services, LLC ("MSS"), a wholly-owned subsidiary of MNA. In providing its services to MIT, MSS employs a subadviser for each of the series of MIT. MSS is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") and as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act"). One of the subadvisers employed by MSS is Manufacturers Adviser Corporation ("MAC"), an indirect, wholly-owned subsidiary of ManAmerica, which is also registered as an investment adviser under the Advisers Act.

The principal underwriter of the Contracts issued by MNA is MSS. The principal underwriter of the Contracts issued by ManAmerica is ManEquity, Inc. ("ManEquity"), an indirect, wholly-owned subsidiary of ManAmerica. ManEquity is registered as a broker-dealer under the 1934 Act. After the Transfer, the principal underwriter will be a wholly-owned subsidiary of Manulife that will be registered as a broker-dealer under the 1934 Act.<sup>2</sup>

Certain Contracts funded in one of the MNA Separate Accounts invest in three series of Merrill Lynch Variable Series Funds, Inc. ("ML Fund") as well as in series of MIT. ML Fund is an open-end management investment company registered under the 1940 Act. The investment adviser for ML Fund is Merrill Lynch Investment Management, L.P. MIT, and the ML Fund are hereinafter collectively referred to as the "Underlying Funds."

**E. Separate Accounts and Contracts**

ManUSA has registered one separate account under the 1940 Act and one variable life insurance contract under the 1933 Act.<sup>3</sup>

ManAmerica has four Separate Accounts.<sup>4</sup> Separate Account One funds one variable life insurance contract<sup>5</sup> as to which ManAmerica is relying on the Staff no-action position taken in *Great-West Life and Annuity Insurance Company* (available October 23, 1990) ("*Great-West*")<sup>6</sup> Separate Account Two funds two variable annuity contracts<sup>7</sup> as to both of which ManAmerica is relying on *Great-West*. Separate Account Three funds seven variable life insurance contracts<sup>8</sup> as to three of which ManAmerica is relying on *Great-West* Separate Account Four funds two variable life insurance contracts<sup>9</sup> as to one of which ManAmerica is relying on *Great-West*.

MNA has two Separate Accounts. Separate Account A funds eleven variable annuity contracts.<sup>10</sup> Separate Account B funds one variable life insurance contract as to which MNA is relying on *Great West*.<sup>11</sup>

Each separate account discussed under this caption is registered as a unit investment trust under the 1940 Act and consists of subaccounts each of which invests exclusively in shares of one of the series of MIT (or in the case of certain Contracts funded in MNA Separate Account A in the shares of one of three series of ML Fund).

**F. Registered MVA Contracts**

ManAmerica offered the ManAmerica Registered MVA Contract only as an investment option under a Contract which it no longer offers and as to which it is currently relying on *Great-West*.<sup>12</sup> ManAmerica holds assets attributable to the reserves it must maintain for, and its other liabilities with respect to, the ManAmerica Registered MVA Contract in a non-unitized separate account which is not registered under the 1940 Act. ManAmerica is no longer offering the ManAmerica Registered MVA Contract, is not accepting additional purchase payments under outstanding ManAmerica Registered MVA Contracts (or transfers from the Separate Account for the variable portion of the Contract) and is not filing post-effective amendments to the 1933 Act registration statement for the ManAmerica Registered MVA Contract. At the effective time of the Transfer, ManAmerica will transfer assets equal to its reserves and other liabilities under these contracts to ManUSA, and ManUSA will enter into an assumption reinsurance arrangement with respect to, and thereby assume ManAmerica's obligations under, the contracts. ManUSA does not intend to offer additional ManAmerica Registered MVA Contracts, accept additional purchase payments under the ManAmerica Registered MVA Contracts that it reinsures (or accept transfers from the Separate Account for the variable portion of the Contract) or file post-effective amendments to the current 1933 Act registration statement, or a new 1933 Act registration statement, for the ManAmerica Registered MVA Contract.

The MNA Registered MVA Contract is a single purchase payment deferred fixed annuity contract which is offered to individuals and to eligible groups. It has no variable investment options. MNA holds assets attributable to the reserves it must maintain for, and its other liabilities with respect to, the MNA Registered MVA Contract in a non-unitized separate account which is not registered under the 1940 Act. At the effective time of the Transfer, as a result of the merger of

MNA into ManUSA, assets equal to its reserves and other liabilities under these contracts will be transferred by MNA to ManUSA, and ManUSA will assume MNA's obligations under the contracts. Sales of the MNA Registered MVA Contract will cease as of the effective time of the Transfer.

## *II. Proposed Transaction*

Manulife Financial conducts insurance and related operations in the United States through more than 15 wholly-owned subsidiaries, including ManUSA, ManAmerica and MNA. It proposes to simplify its corporate and operational structure so that it might operate more efficiently and reduce administrative and compliance costs. A major step in this process is to combine the operations of ManAmerica and MNA with those of ManUSA. To achieve this objective, ManUSA, ManAmerica and MNA will effect the Reorganization, i.e., (i) the merger of MNA into ManUSA, and (ii) the transfer of substantially all the assets and liabilities of ManAmerica to ManUSA, in connection with which ManUSA will enter into assumption reinsurance arrangements with respect to the ManAmerica Contracts and the ManAmerica Registered MVA Contract.

The Reorganization will include, among other things, the Transfer, i.e., a transfer by ManAmerica and MNA of each of their Separate Accounts intact to ManUSA, and the Fixed Account Transfer, i.e., a transfer by ManAmerica and MNA to ManUSA of non-unitized separate account assets intact and of general account assets, together equal to the reserves and other liabilities under the Registered MVA Contracts. ManUSA, ManAmerica and MNA anticipate that the Reorganization, including the Transfer and the Fixed Account Transfer, will be effective on January 1, 2002 (the "Effective Date"). They will bear all costs associated with those transactions.

### *A. The Transfer*

ManUSA, ManAmerica and MNA will follow the procedures set forth below in implementing the Transfer.

Prior to the date of this letter:

- ManUSA and ManAmerica entered into an agreement for assignment of assets and assumption of liabilities and an assumption reinsurance agreement, each of which was approved by their Boards of Directors. The Separate Accounts are not parties to these agreements.

- The combination of ManUSA and ManAmerica, including the assumption reinsurance agreement, received approvals required under applicable state insurance laws, including approval by the Insurance Commissioner of the state of Michigan.

- ManUSA and MNA entered into a merger agreement that was approved by their Boards of Directors. The Separate Accounts are not parties to this agreement.

- The combination of ManUSA and MNA received approvals required under applicable state insurance laws, including approval by the Insurance Commissioners of the states of Michigan and Delaware.

- ManUSA prepared new registration statements for the Contracts on Forms N-4 and S-6 under the 1933 Act which it will file and request be declared effective in connection with the Transfer.

On the Effective Date:

- ManUSA will receive all the assets of each Separate Account, which will be maintained intact and not combined with the assets of any other separate account of ManUSA or any other entity in connection with the Transfer, will assume the liabilities and obligations of ManAmerica and MNA under the Contracts<sup>13</sup> and will become the depositor for the Separate Accounts and the co-issuer with the Separate Accounts of the Contracts, as a result of which each Separate Account previously maintained by ManAmerica or MNA will become a Separate Account of ManUSA.

- Except for the succession of ManUSA to the role of depositor for the Separate Accounts and to the liabilities and obligations arising under the Contracts, the Transfer will not: have any effect on the Separate Accounts; affect the provisions of, or the rights and obligations under, the Contracts, including those dealing with withdrawal or surrender rights or charges, death benefits; annuity options, investment options, administrative charges and mortality and expense risk charges; or dilute or otherwise adversely affect the economic interests of the Contract Owners

Immediately after the Transfer, and except for ongoing Contract charges and deductions noted in the immediately following paragraph:

- The assets and liabilities of each Separate Account will have been transferred intact from ManAmerica or MNA and will be same as they were immediately prior to the Transfer and will be legally separate from any other business of ManUSA.

- Each Contract will continue to be funded in the same Separate Account in which it was funded immediately prior to the Transfer.

- Each Contract Owner's interest will be the same as it was immediately prior to the Transfer, i.e., the respective net asset values per unit of interest in each Separate Account and the values determined under the Contracts will be identical to what they would have been absent the Transfer.

- Each Separate Account will continue to maintain its separate status as a unit investment trust under the 1940 Act and as a separate account under applicable state law

- Each Separate Account will continue to have available for investment all the series of Underlying Funds in which it invested immediately prior to the Transfer. No existing investment option will have been substituted or terminated by virtue of the Transfer, and the addition of any new investment option will not have been contingent upon the effectiveness of the Transfer

- ManUSA and each Separate Account will file an amendment to the existing registration statement under the 1940 Act of the Separate Account on Form N-4 or Form N-8B-2, as appropriate, to reflect the change in legal ownership of the assets of the Separate Account from ManAmerica or MNA to ManUSA.

- The principal underwriter for the Contracts will continue to be a wholly-owned subsidiary of Manulife

- In compliance with applicable state law, ManUSA, ManAmerica and MNA will notify Contract Owners that ManUSA has assumed all obligations and responsibilities of ManAmerica or MNA under the Contracts.

Except for charges and deductions that would have been made pursuant to the Contracts in any event in the absence of the Transfer, there will be no charge against or other deduction from the Separate Accounts or the Contracts in connection with the Transfer.

After the Transfer, ManUSA intends to accept additional payments under the transferred Contracts outstanding at the time the Transfer is effected, and to continue offering new Contracts through the Separate Accounts identical to the Contracts being offered on the Transfer Date, but for the change in depositor. Payments so accepted and new contracts so offered will be covered by the new registration statements to be filed with the Commission under the 1933 Act in connection with the Transfer. ManUSA will not accept payments under the Contracts, and will not offer identical new Contracts, until the new registration statements filed with the Commission have been declared effective and the Reorganization has become effective. ManUSA in the future may register other variable contracts to be offered through the Separate Accounts or other separate accounts

ManUSA, ManAmerica and MNA have determined, based on the nature of the Transfer and related transactions involved in the Reorganization, that no provision of the Contracts or state law provides Contract Owners with any right to opt-out of, or to vote on or otherwise consent to, the Transfer or any other aspect of the Reorganization. Neither the Transfer nor any other aspect of the Reorganization gives rise to any event affecting any Separate Account that would require a vote of Contract Owners under the 1940 Act. Consequently, Contract Owners will have no investment decision to make with respect to the Transfer or any other aspect of the Reorganization.

The Transfer will have no effect on the Underlying Funds. The Underlying Funds will not be parties to the Transfer or to any related transaction the implementation of which is contingent upon consummation of the Reorganization. Neither the Transfer nor any other aspect of the Reorganization will, with respect to each series of the Underlying Funds in which the Separate

Accounts invest, give rise to, a change in investment objectives, policies and restrictions, the addition, substitution, amendment or termination of a series; or a change in investment adviser, subadviser, assets or charges imposed on the series or its shareholders. Therefore, there will be no event affecting any of the Underlying Funds or any series of the Underlying Funds in which the Separate Accounts invest that would require a vote of its shareholders under state law or the 1940 Act

***B. The Fixed Account Transfer***

ManUSA, ManAmerica and MNA will follow procedures in connection with the transfer of the Registered MVA Contracts that are substantially the same as those set forth above for the Transfer, except for those procedures that reflect requirements of the 1940 Act. The assumption reinsurance agreements that apply to the Contracts issued by ManAmerica will also apply to the ManAmerica Registered MVA Contract. On the Effective Date, each non-unitized separate account of ManAmerica and MNA will become a non-unitized separate account of ManUSA. At the same time, ManUSA will assume legal ownership of the fixed account assets of ManAmerica and MNA (and, in the case of ManAmerica, reinsure the Registered MVA Contracts at full value) and become responsible for all the liabilities and obligations of ManAmerica and MNA under the Registered MVA Contracts which they issued prior to the Transfer. As in the case of the Contracts, ManAmerica will remain contingently liable under the Registered MVA Contracts previously issued by it, subject to indemnities to be determined by negotiation between the parties. The Fixed Account Transfer will not change the terms of the Registered MVA Contracts, except for the succession of ManUSA as the insurer under the Registered MVA Contracts, and it will not adversely affect the values determined under, or the economic interests of the owners of, those contracts.

In compliance with applicable state law, ManUSA, ManAmerica and MNA will notify the owners of the Registered MVA Contracts that ManUSA has assumed all obligations and responsibilities of ManAmerica or MNA under those contracts.

After the Fixed Account Transfer, ManUSA intends to treat the Registered MVA Contracts as follows. It will treat the ManAmerica Registered MVA Contracts in the same way that they are currently treated by ManAmerica. It will not offer the ManAmerica Registered MVA Contract and will not accept additional purchase payments under outstanding ManAmerica Registered MVA Contracts (or transfers from the Separate Account for the variable portion of the Contracts). It will also treat the MNA Registered MVA Contracts (these are single payment fixed annuity contracts that do not provide for any transfers to or from any of the Separate Accounts) that are outstanding at the effective time of the Transfer in the same way that they are then being treated by MNA. Sales of the MNA Registered MVA Contract will cease as of the Fixed Account Transfer.

ManUSA, ManAmerica and MNA have determined, based on the nature of the Fixed Account Transfer and related transactions, that no provision of the Registered MVA Contracts or state law provides the owners of those contracts with any right to opt-out of, or to vote on or otherwise consent to, the Fixed Account Transfer. Consequently, owners of Registered MVA



Contracts will have no investment decision to make with respect to the Fixed Account Transfer.

### III. Discussion

As discussed more fully below, it is our view that Section 5 of the 1933 Act and Rule 145 thereunder and Sections 8 and 11 of the 1940 Act are inapplicable to the Transfer and that the exemptive relief under the 1940 Act granted, and the no-action assurances given, to ManAmerica or MNA and their respective Separate Accounts prior to the Transfer and listed in note 19 may continue to be relied upon after the Transfer by ManUSA and the affected Separate Accounts without the need for the filing of amended or duplicative exemptive applications or no-action requests with the Commission.

The staff has, in the past, responded favorably to no-action requests dealing with the provisions of the 1933 Act and the 1940 Act noted above for similar transactions.<sup>14</sup> The proposed Transfer poses no different issues than those present in these previous transactions.<sup>15</sup>

It is also our view, as discussed below, that Section 5 of the 1933 Act and Rule 145 thereunder do not apply to the Fixed Account Transfer.

#### A. Section 5 of the 1933 Act and Rule 145 Thereunder Are Inapplicable to the Transfer

In our view, the Transfer will not result in the offer or sale of any new or different security or in the creation of a new or different investment company for purposes of Section 5 of the 1933 Act. Each Separate Account after the Transfer will remain intact, and its assets will be legally segregated from all other assets of ManUSA and will not be combined with those of any other account or entity.

There will be by virtue of the Transfer no change to the Contracts, except for ManUSA succeeding ManAmerica and MNA as the insurance company co-issuing the Contracts with the Separate Accounts and providing the rights and benefits under the Contracts to Contract Owners. These rights and benefits (i.e., surrender rights, annuity options, death benefits, etc.) will remain the same, each Contract will remain funded by the same pools of assets which constitute the Separate Account in which it was funded immediately prior to the Transfer; and each Separate Account will continue to have available for investment all the series of Underlying Funds in which it invested prior to the Transfer.

As discussed above, Contract Owners will not have the opportunity to opt-out of or to vote on or consent to the Transfer and will not, by virtue of the Transfer, have available any new or different investment options. Consequently, Contract Owners will have no new investment decision to make in connection with the Transfer. Based on the foregoing, we believe that Section 5 of the 1933 Act and Rule 145<sup>16</sup> thereunder are inapplicable to the Transfer.<sup>17</sup>

We believe, however, that registration statements for the Contracts issued through the Separate Accounts, as accounts of ManUSA, need to be in effect under the 1933 Act to cover additional payments accepted on Contracts outstanding at the time the Transfer is effected and Contracts issued after that time. As noted above, in connection with the Transfer, ManUSA and the Separate Accounts will file new registration statements on Forms N-4 and S-6 with the Commission under the 1933 Act and will request that the registration statements be declared effective in connection with the Transfer. These new registration statements would reflect ManUSA's assumption of the contractual obligations and liabilities of ManAmerica and MNA with respect to the Contracts pursuant to the Transfer. After the Transfer, each Contract Owner at the time of the Transfer will receive a prospectus that reflects ManUSA as the co-issuer with a Separate Account of the Contract owned by the Contract Owner and as the depositor of the Separate Account in which the Contract is funded, but which retains the historical financial information of the Separate Account. (This procedure will be followed both for those Contracts being offered by ManAmerica or MNA at the time of the Transfer and for those Contracts not then being offered for which a 1933 Act registration statement is not being maintained in reliance on the staff no-action position taken in *Great-West*. After the Transfer, ManUSA will follow the procedures set forth in *Great-West* with respect to these Contracts.)<sup>18</sup>

***B. Section 11 of the 1940 Act Is Inapplicable to the Transfer***

Based on the analysis set forth above relating to Section 5 and the precedents cited in note 14, we also believe that the Transfer would not involve an exchange of securities, namely the Contracts, issued by an investment company for another security of an investment company for purposes of Section 11 of the 1940 Act. However, should the Transfer be viewed as including an offer of exchange of investment company securities within the meaning of Section 11 of the 1940 Act, we believe that the Transfer will comply with the requirements of Rule 11a-2 thereunder. Thus, Commission approval should not be required under Section 11 of the 1940 Act in connection with effecting the Transfer.

***C. Section 8 of the 1940 Act Is Inapplicable to the Transfer***

We believe that the Transfer can, and should, be effected through the amendment of the existing registration statements for the Separate Accounts under the 1940 Act rather than through the filing of new notifications of registration and registration statements for the Separate Accounts pursuant to Section 8 of the 1940 Act. The change in the depositor of the Separate Accounts caused by the Transfer will not change the structure or operations of the Separate Accounts or a Separate Account's relationship to the insurance company that is the co-issuer with the Separate Account of the Contracts funded in that Separate Account, to any other separate account of that insurance company or to the Contract Owners.

As indicated above, ManUSA and each Separate Account will file an amendment to the existing registration statement of the Separate Account on Form N-4 or Form N-8B-2 under the 1940 Act to reflect the change in depositor of the Separate Account from ManAmerica or MNA to

ManUSA as a result of the Transfer.

*D. Continuation of Exemptive Relief and No-Action Assurances Previously Granted*

We believe that the exemptions under the 1940 Act and no-action assurances listed below<sup>19</sup> which the Separate Accounts and ManAmerica or MNA and the other parties named therein have received from the SEC or its staff should continue to be applicable after the Transfer to each such Separate Account and ManUSA and such other parties, to the extent they continue to be relied upon, without the filing with the Commission of amended or duplicative applications or no-action requests for the same relief. Their continued applicability is appropriate because the Transfer will not change either the structure or operations of any Separate Account, nor its relationship to its depositor, any other separate account or Contract Owners. The only resulting change will be the substitution of ManUSA for ManAmerica or MNA as depositor for each Separate Account and co-issuer with the Separate Account and insurer of the Contracts. It is our view that such a change has no impact upon, and is not relevant to, the exemptions that were previously granted or the justifications offered for those exemptions.

*E. Section 5 of the 1933 Act and Rule 145 Thereunder Are Inapplicable to the Fixed Account Transfer*

In our view, the Fixed Account Transfer will not result in the offer or sale of any new or different security for purposes of Section 5 of the 1933 Act. No change will be made to the Registered MVA Contracts, except for ManUSA succeeding ManAmerica and MNA as the insurance company responsible for providing the rights and benefits under the Registered MVA Contracts to the owners of those contracts. These rights and benefits (i.e., surrender rights, annuity options, death benefits, etc.) will remain the same. Each of ManAmerica and MNA will transfer its non-unitized separate accounts which hold assets supporting the reserves and other liabilities under the Registered MVA Contracts intact to ManUSA in the same manner that it transfers the assets and liabilities of the Separate Accounts. Consequently, when the Fixed Account Transfer becomes effective, ManUSA will hold these assets in the same non-unitized separate accounts in which they were held prior to the transfer.

As discussed above, owners of Registered MVA Contracts will not have the opportunity to opt-out of or to vote on or consent to the Fixed Account Transfer and will not, by virtue of the Fixed Account Transfer, have available any new or different investment options. Consequently, owners of Registered MVA Contracts will have no new investment decision to make in connection with the Fixed Account Transfer. Based on the foregoing, we believe that Section 5 of the 1933 Act and Rule 145 thereunder are inapplicable to the Fixed Account Transfer and that, accordingly, ManUSA may effect the Fixed Account Transfer without having a 1933 Act registration statement in effect with respect to the MVA Registered Contracts at the time of the transfer.

ManUSA will not accept any additional purchase payments under (or transfers to) the Registered MVA Contracts outstanding at the effective time of the Fixed Account Transfer. We believe, therefore, that ManUSA does not need to have registration statements in effect after the

Fixed Account Transfer for the Registered MVA Contracts issued by ManAmerica and MNA.

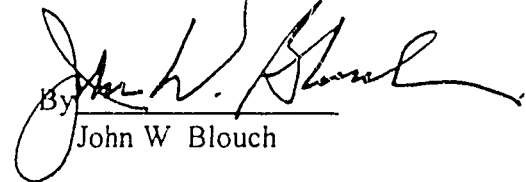
#### **IV. No-Action Request**

Based upon the above facts and circumstances, we respectfully request that the Staff advise us that it will not recommend that the Commission take any enforcement action under Section 5 of the 1933 Act and Rule 145 thereunder in connection with the Transfer or the Fixed Account Transfer or under Sections 8 and 11 of the 1940 Act in connection with the Transfer if the transactions are effected as described herein. In addition, we request that the Staff advise us that it would not recommend enforcement action to the Commission if in effecting the Transfer (i) ManUSA and the Separate Accounts filed an amendment to the registration statement for each Separate Account on Form N-4 or Form N-8B-2 under the 1940 Act to effect the change in depositor for each Separate Account from ManAmerica or MNA to ManUSA and (ii) ManUSA filed new registration statements on Forms N-4 and S-6, as appropriate, for the Contracts under the 1933 Act to cover securities transactions which are effected in connection with the Contracts after the effective time of the Transfer and for which an effective 1933 Act registration statement may be required. We also request the Staff's concurrence in our view that the exemptive orders and no-action letters cited herein, to the extent they continue to be relied upon, will continue to be applicable to the Separate Account to which granted, to ManUSA and to the other parties named therein without the filing with the Commission of amended or duplicative applications for the same exemptions or no-action requests for the same assurance.

If you have any questions or require further information with respect to this matter, please call the undersigned at 202-223-3500.

Very truly yours,

Jones & Blouch L.L.P.

By   
John W. Blouch

1. MIT was originally organized as NASL Series Fund, Inc., a Maryland corporation, to serve as the underlying fund for the Contracts issued by MNA. Effective December 31, 1988, NASL Series Fund, Inc. was reorganized as the Massachusetts business trust which is today known as MIT. Effective December 31, 1996, the series of Manulife Series Fund, Inc., a Maryland corporation, which since its organization had served as the sole underlying fund for the Contracts issued by ManAmerica, were merged into series of MIT as a result of which MIT became the underlying fund for both ManAmerica and MNA.

2. Manulife has three wholly-owned United States subsidiaries that are registered as broker-dealers under the 1934 Act and, independently of the Reorganization, has been considering combining some or all of their operations. Manulife currently expects that effective January 2, 2002 the broker-dealer activities of MSS and ManEquity will be transferred to Manulife Financial Securities LLC ("MFS"), a recently organized Delaware limited liability company that is a wholly-owned subsidiary of Manulife, and that MFS will succeed MSS and ManEquity as the principal underwriter for the Contracts

3 ManUSA Separate Account A - File No. 811-10205 (Form N-8B-2)

Variable Life Insurance Contracts, File No 333-41814 (Form S-6)

ManUSA also has a number of unregistered separate accounts which it uses to fund group annuity contracts that it issues to qualified retirement plans and which are excepted from the definition of investment company by Section 3(c)(11) of the 1940 Act

4 The ManAmerica Separate Accounts have been operated under Michigan law since December 9, 1992 as a result of the redomestication of that company from Pennsylvania to Michigan

5. ManAmerica Separate Account One - File No 811-3933 (Form N-8B-2)

Fixed Premium Variable Life Insurance Contracts (Director 2000), File No 2-88607 (Form S-6)(Relying on *Great-West*)

6 An indication that ManAmerica or MNA is relying on *Great-West* with respect to a particular Contract means that the company has ceased offering that Contract and is following the procedures set forth and relying on the Staff no-action position taken in *Great-West*. Contract Owners continue to be entitled to make purchase payments under their Contracts, to make withdrawals from the Separate Account in which the Contract is funded and, except as otherwise noted in this request, to transfer amounts among subaccounts available under the Contract.

7 ManAmerica Separate Account Two - File No. 811-5179 (Form N-4)

Flexible Payment Variable Annuity Contracts (Lifestyle Annuity), File No 33-57020 (Form S-1) and File No. 33-57018 (Form N-4)(Relying on *Great-West*)

Flexible Payment Variable Annuity Contracts (Variable Annuity), File No. 33-14499 (Form N-4)(Relying on *Great-West*)

8. ManAmerica Separate Account Three - File No. 811-4834 (Form N-8B-2)

Single Premium Variable Life Contracts (Capital Account), File No. 33-8621 (Form S-6)  
(Relying on *Great-West*)

Flexible Premium Variable Universal Life Contracts (Venture VUL), File No. 33-52310  
(Form S-6)(Relying on *Great-West*)

Flexible Premium Variable Universal Life Contracts (VUL 99), File No. 333-69719 (Form S-6)

Single Premium Variable Life Insurance Contracts (SPVL), File No. 333-82449 (Form S-6)

Flexible Premium Survivorship Variable Universal Life Insurance Contracts (Venture SVUL), File No. 33-77256 (Form S-6)(Relying on *Great-West*)

Flexible Premium Survivorship Variable Universal Life Insurance Contracts (New Venture SVUL), File No. 333-66303 (Form S-6)

Flexible Premium Variable Life Insurance Contracts (Venture VUL Accumulator), File No. 333-45970 (Form S-6)

9. ManAmerica Separate Account Four - File No. 811-5130 (Form N-8B-2)

Flexible Premium Variable Universal Life Contracts (Venture COLI VUL), File No. 33-13774 (Form S-6)(Relying on *Great-West*)

Flexible Premium Variable Universal Life Contracts (Corporate COLI VUL), File No. 333-51293 (Form S-6)

10. MNA Separate Account A - File No. 811-4113 (Form N-4)

Flexible Purchase Payment Variable Annuity Contracts (Ven 1), File No. 2-93435 (Form N-4)(included in 33-76162 pursuant to Rule 429)

Flexible Purchase Payment Variable Annuity Contracts (Ven 3), File No. 33-09960 (Form N-4)(included in 33-76162 pursuant to Rule 429)

Flexible Purchase Payment Deferred Combination Fixed and Variable Annuity Contracts (Old Ven 7), File No. 33-28455 (Form N-4)(included in 33-76162 pursuant to Rule 429)

Flexible Purchase Payment Deferred Combination Fixed and Variable Annuity Contracts (New Ven 7)(Venture - Individual), File No. 33-76162 (Form N-4)(includes Ven 1, Ven 3 and Old Ven 7 pursuant to Rule 429)

Flexible Purchase Payment Deferred Combination Fixed and Variable Annuity Contracts (Old Ven 8), File No. 33-49604 (Form N-4)(included in 33-76684 pursuant to Rule 429)

Flexible Purchase Payment Deferred Combination Fixed and Variable Annuity Contracts (New Ven 8)(Venture - Group), File No. 33-76684 (Form N-4)(includes Old Ven 8 pursuant to Rule 429)

Flexible Purchase Payment Individual Deferred Combination Fixed and Variable Annuity Contracts (Old Vision/Ven10), File No. 33-55712 (Form N-4)(included in 33-77878 pursuant to Rule 429)

Flexible Purchase Payment Individual Deferred Combination Fixed and Variable Annuity Contracts (New Vision/Ven10), File No. 33-77878 (Form N-4)(includes Old Vision/Ven 10 pursuant to Rule 429)

Flexible Purchase Payment Individual Deferred Combination Fixed and Variable Annuity Contracts (Venture Vantage), File No. 333-24657 (Form N-4)

Flexible Purchase Payment Individual Deferred Combination Fixed and Variable Annuity Contracts (Venture Strategy), File No. 333-38081 (Form N-4)

Flexible Purchase Payment Deferred Combination Fixed and Variable Annuity Contracts (Venture III), File No. 333-59168 (Form N-4)

11. MNA Separate Account B - File No. 811-5228 (Form N-8B-2)

Flexible Premium Variable Life Contracts (Venture Life), File No. 33-92466 (Form S-6) (Relying on *Great-West*)

12. The Contract is a Multi-Account Flexible Payment Variable Annuity with both variable and fixed investment options. File Nos. 811-5179, 33-57018 and 33-57020.

13. As part of the assumption reinsurance arrangements, ManAmerica will remain contingently liable under the Contracts previously issued by it, subject to indemnities to be determined by negotiation between the parties.

14. There is a long line of no-action letters concerning intact transfers of separate accounts effected pursuant to merger transactions. There is also a long line of no-action letters that deal with assumption reinsurance arrangements involving intact transfers of separate accounts effected in

connection with transactions that did not involve a merger of two or more insurers. For all practical purposes, these two lines of letters have raised the same issues and resulted in the same no-action assurances. The letters dealing with intact transfers in connection with mergers include: *AUSA Life Insurance Company, Inc* (pub. avail. Sept. 18, 1998); *Pacific Life Insurance Company* (pub. avail. Oct. 29, 1997); *Equitable Life Assurance Society of the U.S.* (pub. avail. Dec. 18, 1996); *Metropolitan Life Insurance Company* (pub. avail. May 17, 1996); *Massachusetts Mutual Life Ins Co et al* (pub. avail. Feb. 15, 1996); *Intramerica Life Ins Co* (pub. avail. Oct. 29, 1992); *Phoenix Mutual Life Ins Co, et al* (pub. avail. April 13, 1992); *California-Western States Life Ins Co* (pub. avail. Dec. 9, 1991); *UNUM Life Ins Co* (pub. avail. Oct. 24, 1991); *Merrill Lynch Life Ins Co* (pub. avail. Sept. 26, 1991); *Lincoln National Pension Ins. Co* (pub. avail. Dec. 29, 1988); *Hartford Life Ins. Co et al* (pub. avail. Feb. 16, 1988); *Jefferson Standard Life Insurance Company* (pub. avail. Jan. 20, 1987); *Jefferson National Life Ins. Co.* (pub. avail. Oct. 9, 1986); *American General Life Ins. Co of Delaware* (pub. avail. Mar. 13, 1986); and *Voyager Life Ins. Co* (pub. avail. Jan. 10, 1986) (collectively referred to herein as "merger no-action letters"). The letters dealing with intact transfers in connection with assumption reinsurance arrangements include: *Metropolitan Life Ins. Co, et al.* (pub. avail. Apr. 26, 1995); *Aetna Life Insurance and Annuity Company* (pub. avail. Sept. 15, 1995); *Mutual Benefit Life Insurance Company* (pub. avail. Oct. 27, 1993); *Security First Life Ins Co* (pub. avail. Jan. 17, 1992); *The Great-West Life Assurance Co.* (pub. avail. Dec. 27, 1991); *Allegiance Life Ins Co.* (pub. avail. July 31, 1990); *Mass Life Ins Co of New York, et al* (pub. avail. Nov. 14, 1989); *Anchor National Life Ins. Co* (pub. avail. Nov. 8, 1989); and *Provident Mutual Life Ins Co. of Philadelphia* (pub. avail. Feb. 2, 1987) (collectively referred to herein as "assumption reinsurance no-action letters"). See also *Hartford Variable Annuity Life Ins. Co* (pub. avail. May 31, 1977); *Variable Annuity Accounts B & C of Aetna Variable Life Ins Co* (pub. avail. May 10, 1976); *Hartford Variable Annuity Life Ins. Co.* (pub. avail. Sept. 1, 1975), and *American Variable Annuity Life Assurance Co* (pub. avail. Sept. 6, 1974) which dealt with similar issues in connection with "change in domicile" transactions.

15. The staff provided no-action assurance with respect to Section 17 in the assumption reinsurance no-action letters and in many of the merger no-action letters cited in note 14. In *Metropolitan Life Ins Co* (pub. avail. May 17, 1996) the staff stated that neither Section 17(a) nor Section 17(d) of the 1940 Act is applicable when two insurance companies merge and a separate account is transferred from the merged company to the surviving company if specified conditions are met. In *Metropolitan Life*, the staff further stated that it does not intend to issue further no-action letters in this area absent novel facts and circumstances. ManUSA, MNA and ManAmerica are relying on the position taken in *Metropolitan Life* with respect to both the merger of MNA into ManUSA and the transfer of substantially all the assets and liabilities of ManAmerica to ManUSA.

16. Rule 145 under the 1933 Act provides, in pertinent part, that certain business combinations, including certain mergers, consolidations and transfers of assets, will be deemed to involve the "offer" or "sale" of securities requiring registration under that Act under circumstances where existing security holders are in effect asked to make an investment decision whether to accept a new or different security in exchange for a security they presently own. The Transfer will not involve a merger or consolidation since the Separate Accounts will be transferred intact from ManAmerica



and MNA to ManUSA. Moreover, even if the Transfer were deemed to be a "transfer of assets" for purposes of Rule 145, it is clear that the Rule does not apply because the Contract Owners are not being asked to vote on or to consent to the transaction. For these reasons, we believe that Rule 145 is inapplicable to the Transfer.

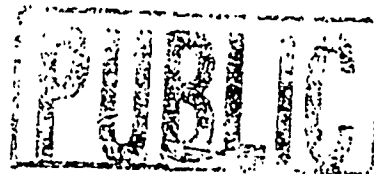
17. Our view is not altered by implementation as of the Effective Date of actions taken by the Trustees of MIT and by its shareholders on December 19, 2001 to approve the creation of a multi-class structure, the adoption of 12b-1 plans and amendments to the Advisory Agreement between MIT and MSS. These are not events of the type covered by Rule 145 which, as discussed in note 16, applies to votes solicited in connection with certain business combinations involving the issuance of new securities. The Staff has granted no-action relief under Section 5 of the 1933 Act and Rule 145 thereunder under circumstances in which shareholder approval of new investment advisory agreements was solicited prior to the effectiveness of the transfers of separate accounts. *Metropolitan Life Insurance Co* (pub. avail. May 17, 1996) and *Voyager Life Ins Co*. (pub. avail. Jan. 10, 1986) (shareholder approval also solicited with respect to the election of directors and ratification of accountants). Moreover, while in each of these letters the implementation of new advisory agreements was contingent upon the effectiveness of the transfers of separate accounts, all the MIT actions will be implemented whether or not the Reorganization is consummated. Because these actions are being taken independently of, and their implementation is not contingent upon, the Transfer, their implementation as of, rather than prior to, the Effective Date, does not alter our view that the Transfer will not result in the offer or sale of a new or different security.

18 We are not requesting any no-action assurances from the staff with respect to the reliance by ManAmerica, MNA and ManUSA on *Great-West*.

19. The Manufacturers Life Insurance Company of North America, et al., (File No. 812-11884). Release No. IC-24378 (April 5, 2000) (Notice), Release No. IC-24431 (April 28, 2000)(Order); The Manufacturers Life Insurance Company of America, et al., (File No. 812-7677). Release No IC-18070 (March 29, 1991) (Notice), Release No. IC-18112 (April 25, 1991) (Order); The Manufacturers Life Insurance Company of America, et al., (File No. 812-6763), Release No. IC-15998 (September 22, 1987) (Notice), Release No. IC-16070 (October 21, 1987) (Order); The Manufacturers Life Insurance Company of America, et al., (pub. avail. December 5, 1988); The Manufacturers Life Insurance Company of America, et al., (pub. avail. March 17, 1986); The Manufacturers Life Insurance Company of America, et al., (pub. avail. February 17, 1985))

DEC 27 2001

ACT SA, ICA  
 SECTION 5, 8 & 11  
 RULE 145  
 PUBLIC  
 AVAILABILITY 12/27/01



RESPONSE OF THE OFFICE OF  
 INSURANCE PRODUCTS  
 DIVISION OF INVESTMENT MANAGEMENT

The Manufacturers  
 Life Insurance Company  
 (U.S.A.), *et al.*

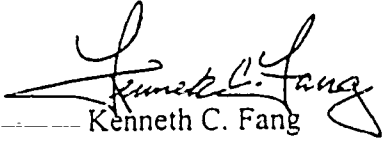
Based on the facts and representations in your letter dated December 27, 2001, and without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission against The Manufacturers Life Insurance Company (U.S.A.) ("ManUSA"), The Manufacturers Life Insurance Company of America ("ManAmerica"), or The Manufacturers Life Insurance Company of North America ("MNA") under Section 5 of the Securities Act of 1933 (the "1933 Act") and Rule 145 thereunder, or Sections 8 and 11 of the Investment Company Act of 1940 (the "1940 Act") if ManAmerica and MNA transfer certain separate accounts ("Separate Accounts") to ManUSA in connection with the proposed reorganization of ManUSA, ManAmerica, and MNA (the "Reorganization"). In addition, we would not recommend enforcement action to the Commission if: (1) the change in depositor for the Separate Accounts as a result of the Reorganization is effected through the filing of amendments to the registration statements for the Separate Accounts on Form N-4 or Form N-8B-2 under the 1940 Act; and (2) new registration statements on Form N-4 or Form S-6 under the 1933 Act are filed by ManUSA and the Separate Accounts to cover any securities issued after the Reorganization in connection with variable annuity and variable life insurance contracts funded by the Separate Accounts

Further, we would not recommend enforcement action to the Commission under Section 5 of the 1933 Act and Rule 145 thereunder if, without registration under the 1933 Act, ManAmerica transfers to ManUSA assets equal to its reserves and other liabilities under a fixed annuity option with a market value adjustment provision, and MNA transfers to ManUSA assets equal to its reserves and other liabilities under a fixed annuity contract with a market value adjustment provision (collectively, "Registered MVA Contracts"), as a result of which ManUSA would assume all of the obligations and responsibilities of ManAmerica and MNA under the Registered MVA Contracts.

In addition, we would not recommend enforcement action to the Commission against ManUSA or the Separate Accounts if, after consummation of the Reorganization, ManUSA, the Separate Accounts, and other parties named in the exemptive orders and no-action letters cited in your December 27, 2001 letter continue to rely on such orders and no-action letters without filing amended or new applications and no-action letters for the same relief previously granted.<sup>1</sup>

<sup>1</sup> You have not requested and we are not providing any assurances with respect to reliance on the staff no-action position taken in *Great-West Life and Annuity Insurance Company* (pub avail October 23, 1990) by ManUSA, ManAmerica or MNA, and the Separate Accounts either prior to or after the Reorganization

Because our position is based on the facts and representations in your letter, you should note that different facts or representations may require a different conclusion. Further, this response expresses the position of the Division on enforcement only, and does not purport to express any legal conclusions on the issues presented.

  
Kenneth C. Fang  
Attorney