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December 22, 2005

Section 5 of the Securities Act of 1933  
Section 8 and 11 of the Investment Company Act of 1940

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

**Re: First Great-West Life & Annuity Insurance Company and Canada Life  
Insurance Company of New York**

Dear Mr. Kotapish:

We are writing on behalf of Canada Life Insurance Company of New York ("CLNY") and First Great-West Life & Annuity Insurance Company ("First GWL&A") in connection with the merger of CLNY and First GWL&A (the "Merger") and the related transfer by First GWL&A of its flexible premium deferred annuity contract to CLNY including the transfers of (i) the separate account supporting the variable options, and (ii) other assets supporting the fixed option (collectively, the "Transfer"). In particular, if CLNY and First GWL&A consummate the Merger, Transfer and related transactions we request that the staff advise us that it would not recommend that the Securities and Exchange Commission (the "Commission") take any enforcement action against CLNY and First GWL&A under:

- Section 5 of the Securities Act of 1933, as amended (the "1933 Act"), and Rule 145 thereunder; and

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- Sections 8 and 11 of the Investment Company Act of 1940, as amended (the "1940 Act").

In addition, we seek confirmation that CLNY, as the surviving entity from the Merger,<sup>1</sup> may continue to rely on the exemptive orders obtained on behalf of First GWL&A, and any other parties named therein without the filing or submission of amended or new applications for the same exemptive relief following the Merger.

In the past, the Commission's staff has granted requests for similar relief. For the reasons set forth below, we believe that the relief requested herein should also be granted.

## **I. BACKGROUND**

### **A. Description of First GWL&A and CLNY**

CLNY is a stock life insurance company incorporated under the laws of the State of New York on June 7, 1971. Its principal administrative offices are located at 50 Main Street, 9th Floor, White Plains, New York 10606. CLNY is principally engaged in issuing annuity and life insurance policies in the State of New York. As of November 30, 2005, CLNY had assets of approximately \$360 million. CLNY is a wholly-owned subsidiary of Great-West Life & Annuity Insurance Company ("GWL&A"), a life insurance company domiciled in Colorado.

First GWL&A is a stock life insurance company incorporated under the laws of the State of New York on April 9, 1996, and is admitted to transact business in the states of New York and Iowa. Its principal administrative offices are located at 50 Main Street, 9th Floor, White Plains, New York 10606. First GWL&A is engaged in the sale of life insurance, accident and health insurance and annuities. As of November 30, 2005, First GWL&A had assets of approximately \$362 million. First GWL&A is a wholly-owned subsidiary of GWL&A, therefore, CLNY and First GWL&A are under common control.

### **B. CLNY Accounts and Related Contracts**

CLNY has two registered separate accounts (the "CLNY Accounts"), which fund variable annuity contracts (the "CLNY Contracts"). The CLNY Accounts are separate accounts created pursuant to New York insurance law, and each is registered with the Commission under the 1940

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<sup>1</sup> Although CLNY will be renamed "First Great-West Life & Annuity Insurance Company" in connection with the Merger, for purposes of this letter, the surviving entity will be referred to as CLNY.

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Act as a unit investment trust.<sup>2</sup> The CLNY Accounts consist of sub-accounts, each of which invests in an open-end management investment company registered under the 1940 Act. The CLNY Contracts supported by the CLNY Accounts are registered as securities with the Commission under the 1933 Act.<sup>3</sup>

The CLNY Contracts, which consist of single premium variable deferred annuity policies and flexible premium variable deferred annuity policies, are no longer offered to the public. Based on the precedent and conditions set forth in a no-action letter issued to Great-West Life & Annuity Insurance Company (pub. avail. Oct. 23, 1990), post-effective amendments are not filed, and updated prospectuses are not distributed to the existing owners of the CLNY Contracts. However, additional premium payments continue to be received under the flexible premium variable deferred annuity policies.

Canada Life of America Financial Services, Inc. ("CLAFS"), an affiliate of CLNY, has been the principal underwriter for the CLNY Contracts. CLAFS merged into and with its affiliate, GWFS Equities, Inc. ("GWFS"), on October 17, 2005.

## **C. First GWL&A Account and the Annuity Contract**

First GWL&A established the Variable Annuity-1 Series Account in accordance with New York insurance law on January 15, 1997 (the "First GWL&A Account"). The First GWL&A Account is registered with the SEC under the 1940 Act, as a unit investment trust.<sup>4</sup> The First GWL&A Account consists of sub-accounts, each of which invests in a management investment company registered under the 1940 Act (a "Portfolio"). The annuity supported by the First GWL&A Account (the "First GWL&A Contract") is a flexible premium deferred annuity contract and is registered as a security with the Commission under the 1933 Act.<sup>5</sup> The First GWL&A Contract permits additional payments and allows transfers among sub-accounts, subject to certain conditions. Prior to March 1, 2003, owners of the First GWL&A Contract could have also allocated value to a fixed option which paid a stated rate of interest for a fixed period (the "Guarantee Period Fund"). This option is no longer available and only 14 First GWL&A Contract owners currently have amounts allocated to a Guarantee Period Fund.

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<sup>2</sup> Canada Life of New York Variable Annuity Account 1 (File No. 811-05961); Canada Life of New York Variable Annuity Account 2 (File No. 811-07776).

<sup>3</sup> Canada Life of New York Variable Annuity Account 1: Varifund (R) Variable Annuity (File No. 033-32199); Canada Life of New York Variable Annuity Account 2: Trillium (R) (File No. 033-64240).

<sup>4</sup> Variable Annuity – 1 Series Account (File No. 811-08183).

<sup>5</sup> Variable Annuity – 1 Series Account: Schwab Select Annuity® (File No. 333-25289).

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Because a market value adjustment applies to early withdrawals from the Guarantee Period Fund (the "MVA Option"), a registration statement on Form S-1 was filed for the MVA Option.<sup>6</sup>

GWFS, a wholly owned subsidiary of GWL&A, is the principal underwriter for the First GWL&A Contract. GWFS is registered with the SEC as a broker/dealer and is a member of the NASD. Its principal offices are located at 8515 East Orchard Road, Greenwood Village, Colorado 80111.

## **II. TRANSACTION**

### **A. The Merger and Transfer**

CLNY and First GWL&A are being merged to enhance operational efficiency, and to reduce administrative and compliance costs. Under the Merger Agreement, First GWL&A will merge with and into CLNY, with CLNY as the surviving entity under New York corporate law, as its corporate registration, federal taxpayer identification number and insurance licenses will be maintained after the Merger. As part of the Merger, for business and marketing purposes, CLNY will be renamed "First Great-West Life & Annuity Insurance Company."

The Merger, including the Transfer and related transactions, has been approved by the Boards of Directors of CLNY and First GWL&A and each party's sole voting shareholder. The parties have obtained the other necessary formal regulatory approval from the State of New York Insurance Department, and expect to have the Merger become effective on December 31, 2005 (the "Effective Date").

Upon the Effective Date, CLNY will assume legal ownership of all of the assets of First GWL&A, including the First GWL&A Account and other assets supporting the First GWL&A Contract, and will become directly liable for First GWL&A's liabilities and obligations, including those with respect to the outstanding First GWL&A Contract. Thus, each First GWL&A Contract owner will become a contract owner of CLNY by operation of law.

The Merger will not affect the provisions of, or the rights and obligations under, the First GWL&A Contract. After the Merger, CLNY will administer the First GWL&A Contract in the same manner as First GWL&A did immediately prior to the Merger. CLNY intends to accept additional payments under each transferred First GWL&A Contract that is outstanding at the time the Merger is effected, and to offer the First GWL&A Contract to new purchasers. In

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<sup>6</sup> File No. 333-25269.

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addition, the Merger will not dilute or otherwise adversely affect the economic interests of the owners of the First GWL&A Contract, nor will the Merger affect the values determined under the First GWL&A Contract. Moreover, no charges will be imposed on, or other deductions made from, the First GWL&A Account or the CLNY Accounts in connection with the Merger as all direct and indirect costs of the Merger will be borne by CLNY or First GWL&A and not by any CLNY or First GWL&A Contract owners. Finally, the First GWL&A Account will continue to fund the First GWL&A Contract as it did immediately prior to the Merger.

The First GWL&A Account will be transferred intact to CLNY. The CLNY Accounts and the First GWL&A Account (collectively, the "Accounts") will continue to maintain their separate account status as unit investment trusts under the 1940 Act and as separate accounts under applicable state insurance law. No Account will be merged with or into another. Thus, the net unit value of the First GWL&A Account in effect immediately after the Transfer will be identical to the net asset value per unit of interest in effect immediately before the Transfer.

The Merger will not directly affect any Portfolio underlying either the First GWL&A Account or the CLNY Accounts (collectively, the "Portfolios"). No new investment options will be made available to owners of the First GWL&A Contract in connection with, or by virtue of, the Merger, nor will any existing investment options be substituted or terminated. Each sub-account of the First GWL&A Account will continue to invest in the same underlying Portfolio as that sub-account invested in prior to the Merger. The investment objectives, policies, and restrictions of the Portfolios will not be changed as a result of the Merger or any related transaction. No investment portfolios are proposed to be added to, substituted by, or terminated by the Portfolios in connection with the Merger or any related transaction. Moreover, the Portfolios will not be a party to the Merger or any related transaction, and the Merger will not result in any change to the investment advisers for the Portfolios, the Portfolios' assets, or the charges imposed on the Portfolios or their shareholders.

CLNY and First GWL&A have determined that no provision of the First GWL&A Contract or state law provides the owners of the First GWL&A Contract with any right to opt-out of, or to vote on or otherwise consent to, the Merger. Rather, the only required votes are those of the sole voting shareholders of the merging companies. Moreover, none of the events affecting the First GWL&A Account in connection with the Merger require a vote of First GWL&A Contract owners under the 1940 Act. In addition, as described above, the investment options and contractual rights and obligations under the First GWL&A Contract will not change, except that

CLNY will become the depositor of the First GWL&A Account. Consequently, First GWL&A Contract owners will have no investment decision to make with respect to the Merger.

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## **B. Procedural Matters**

First GWL&A has filed a prospectus supplement pursuant to Rule 497 to inform the First GWL&A Contract owners of the proposed Merger, including the Transfer. On January 3, 2006, CLNY will file a new registration statement on Form N-4 under the 1933 Act and an amendment to the existing registration statement for the First GWL&A Account under the 1940 Act to reflect the change in depositor of the First GWL&A Account and CLNY's assumption, pursuant to the Merger, of First GWL&A's contractual obligations and liabilities under the First GWL&A Contract.<sup>7</sup> The registration statement will include financial statements of CLNY,<sup>8</sup> pro forma financial statements reflecting consummation of the Merger and the historical financial information of the First GWL&A Account. The prospectus included in the new registration statement will be sent to all First GWL&A Contract owners. Following the Effective Date, CLNY will not make offers or accept payments under the First GWL&A Contract until the new registration statement filed with the Commission is effective. CLNY will seek to have the new registration statement declared effective on January 3, 2006.

## **III. ANALYSIS**

### **A. Introduction**

As discussed more fully below, it is our view, with regard to the Merger, that:

- Section 5 of the 1933 Act and Rule 145 thereunder are inapplicable to the Merger, and no registration statement on Form N-14 is required;
- Section 8 of the 1940 Act is inapplicable to the Merger; and

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<sup>7</sup> As previously discussed, CLNY will be renamed First Great-West Life & Annuity Insurance Company. Prospectus supplements have been filed for the CLNY Contracts and Accounts reflecting CLNY's proposed name change and the corresponding proposed name changes to the CLNY Accounts pursuant to Rule 497.

<sup>8</sup> In accordance with the relief provided by the staff, CLNY's financial statements will include the audited balance sheets prepared in accordance with generally accepted accounting principles ("GAAP") as of December 31, 2004 and 2003, audited statutory balance sheet as of December 31, 2003, audited GAAP statement of income, stockholder's equity and cash flows for the year ended December 31, 2004 and audited statutory statements of income, stockholder's equity and cash flows for the two years ended December 31, 2003. See Brian D. Bullard's letter of October 1, 2003 to James F. Jorden.

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- Section 11 of the 1940 Act is inapplicable to the Merger, but if Section 11 is viewed as applicable to the Merger transactions, the transactions will comply with the conditions of Section 11(a) of the 1940 Act, and Rule 11a-2 thereunder.

CLNY and First GWL&A do not seek no-action reassurance under Section 17(a) or Section 17(d) of the 1940 Act with respect to the Transfer.<sup>9</sup>

In support of our views, we note that the Merger is analytically the same as numerous mergers, involving stock and mutual life insurance companies issuing variable insurance products, that have been the subject of previous no-action requests, seeking substantially identical relief from the provisions of the 1933 Act and 1940 Act noted above, to which the staff responded favorably.<sup>10</sup> Thus, the relief sought in this request for the Merger, poses no different issues than those present in these previous transactions.

## **B. Section 5 of the 1933 Act and Rule 145 Thereunder are Inapplicable to the Transfer**

In our view, the Merger, including the Transfer and other related transactions, 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 issuer requiring a new registration statement pursuant to Section 5 of the 1933 Act or Rule 145 thereunder. Rule 145, an interpretive rule adopted by the Commission, provides guidance on when certain corporate reorganizations may entail the offer or sale of a new security in exchange for outstanding securities of a corporation involved in the reorganization.<sup>11</sup>

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<sup>9</sup> On a number of previous occasions, the Commission staff has been asked to provide no-action assurances (which the staff has granted) with respect to Section 17(a) and 17(d) of the 1940 Act in situations when insurance companies merged and transferred separate accounts in connection with a merger. *See, e.g.*, Metropolitan Life Ins. Co. (pub. avail. May 17, 1996); Intramerica Life Ins. Co. (pub. avail. Oct. 29, 1992); California-Western States Life Ins. Co. (pub. avail. Dec. 9, 1991); UNUM Life Ins. Co. (pub. avail. Oct. 24, 1991); Lincoln National Pension Ins. Co. (pub. avail. Dec. 29, 1988); and American General Life Ins. Co. of Delaware (pub. avail. Mar. 13, 1986). The staff stated in Metropolitan Life that it does not intend to issue additional no-action letters in this area absent novel facts and circumstances. We do not believe that novel facts or circumstances are present with respect to the Transfer and the factors discussed in the foregoing letters.

<sup>10</sup> *See, e.g.*, Sun Life Assurance Company of Canada (U.S.) (pub. avail. Dec. 19, 2003); Acacia National Life Ins. Co. (pub. avail. Dec. 19, 2003); Sun Life Insurance and Annuity Co. of New York (pub. avail. Dec. 20, 2002); The Manufacturers Life Ins. Co. (pub. avail. Dec. 27, 2001); Aid Association for Lutherans/Lutheran Brotherhood (pub. avail. Dec. 21, 2001); Jefferson Pilot Financial Ins. Co. (pub. avail. Aug. 1, 2000); AUSA Life Ins. Co. (pub. avail. Sept. 18, 1998).

<sup>11</sup> Rule 145 under the 1933 Act may apply when a plan or agreement is submitted to security holders for a vote or consent for, among other things, "a statutory merger or consolidation or similar plan or acquisition in which

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The Merger involves facts that are similar in all material respects with those set forth in the precedent no-action requests for which the staff granted relief under Section 5 of the 1933 Act or Rule 145 thereunder. As with these prior no-action requests, the Merger involves two insurance companies, CLNY and First GWL&A, and both have variable contracts outstanding. In each of the previous no-action requests, the underlying assets supporting the contracts were transferred. In particular, in the precedent no-action requests the relevant separate account was transferred intact and the separate account remained legally segregated from the other business of the surviving insurance company after the merger.<sup>12</sup> Similarly, in connection with the Merger, the underlying assets supporting the First GWL&A Contract will be legally segregated from all other assets of CLNY and will not be combined with the CLNY Accounts because the First GWL&A Account will be transferred intact. The change of the depositor of the separate account from First GWL&A to CLNY will not affect those aspects of the First GWL&A Contract that cause it to be treated as a security (i.e., the variable nature of the benefits under the First GWL&A Contract) as the First GWL&A Contract will continue to be funded by the transferred First GWL&A Account investing in the same underlying investment vehicles. With respect to the MVA Option, by operation of law, upon the Merger, the assets supporting the MVA Option for the 14 First GWL&A Contract owners will likewise be transferred to CLNY.<sup>13</sup>

Moreover, in the precedent no-action requests, there were no material changes to the underlying contracts.<sup>14</sup> Upon CLNY's assumption of the First GWL&A Contract, the owners will continue to have the same rights and benefits, including transfer and surrender rights, annuity options and death benefits. In the precedent no-action requests, the transfers were not subject to a vote by the underlying contract owners so as to be deemed an offer pursuant to Rule 145.<sup>15</sup> Likewise, because there is no change to the security aspect of the First GWL&A Contract issued by First GWL&A and no change in the investment options, the Merger is not subject, under either state law or federal securities law, to the vote or consent of any contract owners of either CLNY or First GWL&A. Based on the foregoing, we have concluded that neither

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securities of such corporation or other person held by such security holders will become or be exchanged for securities of any other person." According to the Preliminary Note to Rule 145, "the thrust of the Rule is that an 'offer,' 'offer to sell,' 'offer for sale,' or 'sale' occurs when there is submitted to security holders a plan or agreement pursuant to which such holders are required to elect, on the basis of what is in substance a new investment decision, whether to accept a new or different security in exchange for their existing security."

<sup>12</sup> See SEC no-action letters, *supra* note 10.

<sup>13</sup> See e.g., The Manufacturers Life Ins. Co. (pub. avail. Dec. 27, 2001).

<sup>14</sup> See SEC no-action letters, *supra* note 10.

<sup>15</sup> See SEC no-action letters, *supra* note 10.

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Section 5 of the 1933 Act nor Rule 145 thereunder is applicable to the Transfer by operation of law of the First GWL&A Contract, the First GWL&A Account, the assets in support of the MVA Option and any related transactions.

With respect to the registration statement under the 1933 Act, we believe that a registration statement on Form N-14 is not required to be filed in connection with the Merger.<sup>16</sup> Rather, we believe that the registration statement under the 1933 Act on Form N-4 is required to cover any additional payments accepted on any transferred First GWL&A Contract and any new contract issued thereafter. Therefore, the Form N-4 for the transferred First GWL&A Contract will be filed to (i) reflect the change in depositor of the First GWL&A Account and (ii) reflect CLNY's assumption of First GWL&A's obligations and liabilities under the First GWL&A Contract. The new prospectus will retain First GWL&A Account's historical financial information and disclose that new premium payments will be accepted under the First GWL&A Contract after the Merger. This new prospectus will be sent to all the First GWL&A Contract owners outstanding at the time the Transfer is effected.

## **C. Section 8 of the 1940 Act is Inapplicable to the Transfer of the First GWL&A Account**

It is our view that the succession of CLNY to the position of depositor for the transferred First GWL&A Account as a result of the Merger will not result in the organization or creation of any new investment company requiring a new notification of registration or registration statement pursuant to Section 8 of the 1940 Act. For the precedent no-action requests, the staff granted relief when there was merely a change in the depositor for the separate account.<sup>17</sup> As previously discussed, after the Merger, the only change being made is the change from First GWL&A to CLNY as the depositor. Moreover, the change in the depositor due to the Transfer of the First GWL&A Account will not change the structure or operations of the First GWL&A Account or the relationship of the First GWL&A Account to the First GWL&A Contract owners.

As with the precedent no-action requests, the First GWL&A Account and its assets and liabilities will remain legally separated from the other business of CLNY. Thus, the First GWL&A Account is the same separate entity and thus same investment company for all relevant purposes, including financial reporting.

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<sup>16</sup> We note that the Form N-14 registration statement, by its terms, does not apply to a separate account registered as a unit investment trust.

<sup>17</sup> See SEC no-action letters, *supra* note 10.

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Because the Transfer does not result in the organization or creation of a new investment company and is merely a change in the depositor, an amendment of the existing registration statement of the First GWL&A Account under the 1940 Act is needed. The amendment will be filed with the Commission as part of the process of filing the new 1933 Act registration statement on Form N-4, as discussed above for the First GWL&A Contract. This amendment will reflect CLNY as the depositor of the First GWL&A Account and the transfer of contractual obligations and liabilities from First GWL&A to CLNY as of the Effective Date.

## **D. Section 11 of the 1940 Act is Inapplicable to the Merger**

It is also our view that the Merger, including the Transfer and any related transactions, will not involve an exchange of securities issued by an investment company for any other security of an investment company for purposes of Section 11 of the 1940 Act. Nonetheless, should these transactions be viewed as an offer of an exchange of investment company securities within the meaning of Section 11 of the 1940 Act, we believe that the transactions will comply with the conditions of Section 11(a) of the 1940 Act, and Rule 11a-2 thereunder. Accordingly, Commission approval should not be required under Section 11 of the 1940 Act in connection with effecting the Merger, including the Transfer and any related transactions.

In the precedent no-action requests,<sup>18</sup> the merging insurance companies took the position that the transfer of those contracts to the surviving entity did not involve an exchange of securities, and the staff granted relief for not obtaining Commission approval pursuant to Section 11.<sup>19</sup> The no-action requests asserted that there was no material change to the contracts supported by the transferred separate account. Similarly here, the owners of the First GWL&A Contract will have the same rights and benefits following the Merger, and there will be a mere change in the depositor from First GWL&A to CLNY. Therefore, the Merger, including the Transfer and any related transactions, will not involve an exchange of securities issued by an investment company for any other security of an investment company for purposes of Section 11 of the 1940 Act.

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<sup>18</sup> See SEC no-action letters, *supra* note 10.

<sup>19</sup> See SEC no-action letters, *supra* note 10.

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## **E. Continued Reliance on Prior Exemptive Relief Is Appropriate**

We believe the exemptions under the 1940 Act<sup>20</sup> that First GWL&A, the First GWL&A Account, and the other parties named therein have received from the Commission or its staff should continue to apply after the Merger without the filing with the Commission of amended or duplicative applications for the same relief. Their continued applicability is appropriate because the Merger will not change the operations of the First GWL&A Account, nor its relationship with the First GWL&A Contract owners. In support of our view, we note that the Commission staff has taken a favorable position on similar requests in several no-action letters.<sup>21</sup>

## **IV. RELIEF REQUESTED**

In view of these circumstances, we respectfully request that the staff issue a letter stating that the staff will not recommend that the Commission take any enforcement action against CLNY or First GWL&A under Section 5 of the 1933 Act and Rule 145 thereunder or under Sections 8 and 11 of the 1940 Act in connection with the Transfer, including the transfer of the each outstanding First GWL&A Contract, the First GWL&A Account supporting the variable options and the other assets supporting the fixed option, if the Merger is effected as described herein. Further, we request that the staff indicate in this letter that the staff will not recommend that the Commission take any action if: (1) the change in the depositor for the transferred First GWL&A Account as a result of the Merger is effected through the filing of an amendment to the registration statement for the First GWL&A Account under the 1940 Act; and (2) a new registration statement for the transferred First GWL&A Contract under the 1933 Act is filed by CLNY and the First GWL&A Account to cover any securities issued in connection with the First GWL&A Contract after the Merger is effected. In addition, we request that the staff advise us that it would not recommend that the Commission take any enforcement action if after the Effective Date CLNY, the First GWL&A Account and the parties named therein continue to rely on the exemptive orders cited herein without the filing of amended or duplicative applications for the same exemptions.

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<sup>20</sup> See Great-West Life & Annuity Insurance Company, et al., Investment Company Act Release No. 24272, Jan. 31, 2000 (Order); Great-West Life & Annuity Insurance Company, et al, Investment Company Act Release No. 23622, Dec. 23, 1998 (Order).

<sup>21</sup> See, e.g., Acacia National Life Ins. Co. (pub. avail. Dec. 19, 2003); Allstate Life Ins. Co. (pub. avail. Dec. 23, 2002); The Manufacturers Life Ins. Co. (pub. avail. Dec. 27, 2001).

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If you have a question or comment regarding the foregoing, please feel free to contact me at the above-referenced number or Ann Black, Esq. at 305-347-6859.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Josephine Curbett".

FOR THE FIRM

JC/er

cc: Beverly A. Byrne, Esq.