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October 14, 2005

By Hand

Susan Nash, Esq.  
Associate Director – Disclosure and Insurance Product Regulation  
Division of Investment Management  
Securities and Exchange Commission  
901 E Street, NW  
Washington, D.C. 20004

Re: Request for No-Action Position

Dear Ms. Nash:

We write on behalf of American Home Assurance Company (“American Home”) and National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union,” and together with American Home, the “Guarantors”).

Each Guarantor is a wholly-owned subsidiary of American International Group, Inc. (“AIG”). Several life insurance companies affiliated with AIG currently have certain of their insurance policy obligations, including obligations relating to variable annuity and variable life insurance products issued by separate accounts, guaranteed by one of the Guarantors.<sup>1</sup> The relevant life insurance companies, each of which is a direct or indirect subsidiary of AIG, are: The Variable Annuity Life Insurance Company (“VALIC”), American General Life Insurance Company (“AGL Insurance Co”); The United States Life Insurance Company in the City of New York (“USL Insurance Co”); AIG SunAmerica Life Assurance Company (“AIG SunAmerica”); First SunAmerica Life Insurance Company (“First SunAmerica”); AIG Life Insurance Company (“AIG Life”) and American International Life Assurance Company of New York (“AI Life”) (together, the “Depositors”).

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<sup>1</sup> Currently, either American Home or National Union guarantees the obligations of each Depositor.

On behalf of the Guarantors, we respectfully request confirmation from the staff of the Division of Investment Management (the "Staff") that it would not recommend that any action be taken by the Securities and Exchange Commission (the "Commission" or "SEC") if, under the facts and circumstances described below, each Guarantor signs the registration statements with respect to the variable insurance products for which it provides guarantees, without complying with the periodic reporting requirements of Sections 13 and 15(d) of the Securities Exchange Act of 1934 (the "1934 Act"). In the alternative, we respectfully request that the Staff recommend to the Commission that it grant an application by the Guarantors for an exemption, pursuant to Section 12(h) of the 1934 Act, from the reporting requirements of Sections 13 and 15(d).

### **Factual Background**

Each of the Depositors offers registered variable life and/or variable annuity products through separate accounts. Those offerings are registered under the Securities Act of 1933 (the "1933 Act") and the Investment Company Act of 1940 (the "1940 Act") on either Form N-4 or Form N-6.<sup>2</sup> The registrant under each registration statement is the separate account that offers the variable product. The Depositor under these forms is the life insurance company that establishes and maintains the separate account. Both the registrant and the Depositor sign the relevant registration statement.

As we have mentioned, a Guarantor guarantees the insurance obligations of each Depositor. During recent discussions, the Staff has taken the position that the guarantees are separate securities requiring registration and has requested that the Guarantors sign the registration statements of the variable insurance products to which they relate and include their financial statements in those registration statements. Although AIG disagrees with the Staff's position, in order to address the Staff's concerns, AIG has agreed to cause the Guarantors to sign the relevant registration statements and include in such registration statements financial statements of the relevant Guarantor, as well as include the relevant guarantee.

### **Legal Analysis**

The registration statement Forms N-4 and N-6 do not directly contemplate the registration of guarantees or the joining of guarantors. In particular, they expressly contemplate only two categories of signatories: (1) the "registrant," which is defined to be the "separate account offering the variable product," and (2) the "depositor," which is defined to be the person or persons who have "continuing functions or responsibilities with respect to the administration of the affairs of the registrant," including the sponsoring insurance company.

Section 15(d) of the 1934 Act provides that each issuer that files a registration statement that becomes effective pursuant to the 1933 Act is required to file certain periodic

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<sup>2</sup> In addition to the separate account registration statements filed on Forms N-4 and N-6, AIG SunAmerica and First SunAmerica also register market value adjustment interests on Forms S-1 and S-3. The treatment of the American Home guarantees with respect to these products is not the subject of this request.

reports under Section 13 of the 1934 Act (“Periodic Reports”) unless an exemption applies. If the Guarantors register the guarantees on Form N-4 or N-6 they may be deemed to be subject to Section 15(d). This would be in contrast to the Depositors, who are not required to file Periodic Reports because they are not themselves “registrants” on Forms N-4 or N-6, but are depositors and sponsors of the separate accounts, which are the registrants.

The requirements of Forms N-4 and N-6 reflect the Commission’s determination that the obligations of a depositor are such that they do not render the depositor a “registrant” with respect to the particular registration statement, but do require the depositor to become a party to the registration statement, to execute it, and to provide certain information. To the extent a Guarantor serves to support the obligations of a Depositor, we believe that the Guarantor should not have greater reporting obligations than those of the Depositor, and thus should not be required to file Periodic Reports. In a previous no-action letter, The Ohio National Life Insurance Co., 1982 SEC No-Act. Lexis 1846 (Jan. 11, 1982), the Staff has taken the position that a depositor that had registered a guarantee under the 1933 Act was not obligated to file Periodic Reports. While the guarantor in Ohio National was also the depositor, the policy underlying the no-action position in that situation applies here as well.<sup>3</sup>

As mentioned above, the registration statements for the relevant variable products will include the Guarantor’s financial statements. The offerings by the separate accounts are continuous offerings, and therefore the registration statements of the separate accounts are required to be “evergreen,” meaning that they are updated at least annually. Thus, the Guarantors will update their financial statements in the same manner as the Depositors, on the annual post-effective amendments to the evergreen registration statements.

Annual financial information of depositors has consistently been deemed by the Staff to provide sufficient information to policyholders who are deciding whether or not to purchase and/or make additional contributions to a registered variable product. The Depositors are primarily responsible for ensuring the satisfaction of any obligations that arise under the variable products; the Guarantors provide additional assurance that certain of those obligations will be met. If annual financial statements of the Depositors provide adequate information to policyholders, there is no policy reason why policyholders should need more information from the Guarantors than from the Depositors. Additionally, because the separate accounts issuing the variable products are registered unit investment trusts under the 1940 Act, and because the separate accounts issue securities registered under the 1933 Act, they file annual reports on Form N-SAR, in accordance with Section 13(a) of the 1934 Act and Section 30 of the 1940 Act. In light of the information provided by the separate accounts and the annually updated financial statements of the Guarantors and Depositors that will be included in the registration statements,

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<sup>3</sup> We note that the guarantee in Ohio National guaranteed investment performance and not simply the limited obligations of the depositor, as is the case with respect to the Guarantors. Because the Guarantors provide guarantees only for the insurance obligations of the depositor, it is our view that the case for relief here is substantially stronger than the case in Ohio National.

we believe that policyholders will have sufficient information without the Guarantors filing Periodic Reports.

We also note that each of the Guarantors is subject to extensive regulation by state insurance departments and is required to file annual financial information with the state insurance department in its state of domicile. The domiciliary state insurance departments require that the Guarantors maintain sufficient levels of capital, surplus, risk-based capital, and other measures, all designed to ensure that the Guarantors will be able to meet their financial obligations, including those under the guarantees. The existence of this separate regulatory regime governing the businesses and operations of the Guarantors, in our view, lends further weight to the argument that it is not necessary to impose a higher disclosure standard on the Guarantors than on the Depositors.

The primary purpose of the 1934 Act is “to provide for the regulation of securities exchanges and of over-the-counter markets . . . to prevent inequitable and unfair practices on such exchanges and markets.”<sup>4</sup> There is no trading market for the guarantees. Indeed, there is no trading market for the variable insurance products at all. The guarantees cannot be independently purchased or sold. When a policyholder purchases one of the Depositors’ variable insurance products, and through that variable product benefits from a guarantee from one of the Guarantors, that policyholder’s interest relates to the Guarantor’s ability to meet its obligations. The Guarantor’s statutory financial statements will be made available to the policyholders on the Form N-4 or N-6 registration statements. Because the Form N-4 and N-6 registration statements are evergreened, annual statutory financial statements of the Guarantors are available to policyholders, which are adequate to address the concern about the Guarantor’s ability to meet its obligations, just as the comparable financial statements of the Depositors have been deemed adequate by the Commission under Forms N-4 and N-6.

### **Section 12(h) Request**

In the alternative, we respectfully request that the Division recommend to the Commission that it grant an application by the Guarantors for an exemption from the requirements of Section 15(d) of the 1934 Act for each of the Guarantors, pursuant to Section 12(h) of the 1934 Act.

Section 12(h) under the 1934 Act provides that:

The Commission may . . . exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from Section 13, 14, or 15(d), . . . upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent

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<sup>4</sup> Securities Exchange Act of 1934, 48 Stat. 881 (June 6, 1934) (statement of purpose preceding the provisions of the Act).

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of the activities of the issuer, income or assets of the issuer or otherwise, that such action is not inconsistent with the public interest or the protection of investors.

As discussed above, "the amount of trading interest in the securities" is non-existent, because there is no trading market for either the variable insurance products or the guarantees. In considering "the activities of the issuer," each of the Guarantors is subject to state regulation that is designed to ensure that insurance companies will be able to meet their financial obligations, including the obligations that arise under the guarantees. We believe that the public interest and investor protection considerations that the Commission took into account in crafting the disclosure requirements applicable to the Depositors are equally applicable to the Guarantors, who merely act as a credit support for the Depositors. For these reasons, as well as the other reasons described in this letter, we do not believe that applying a more stringent disclosure standard to the Guarantors than to the Depositors is necessary for the public interest or for the protection of investors (in this case, the policyholders).

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If you have any questions regarding the matter discussed in this letter, please contact me at (202) 508-8060, Benjamin Allensworth at (202) 508-8058, or Bob Reeder of Sullivan & Cromwell LLP at (212) 558-3755.

Sincerely yours,

Handwritten signature of Barry P. Barbash in cursive, with the initials "BBA" written in a smaller font to the right of the signature.

Barry P. Barbash

cc: Meyer Eisenberg, Esq.  
William Kotapish, Esq.  
Robert Reeder, Esq.