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August 22, 2003

**VIA MESSENGER**

Jerry Carpenter, Esquire  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: No-Action Request by Lincoln National Life Insurance  
Company, et al. in Connection with Recordkeeping Services  
for Variable Annuity and Variable Life Insurance Contracts

Dear Mr. Carpenter:

This letter is submitted on behalf of The Lincoln National Life Insurance Company, ("Lincoln Life") and Lincoln Life & Annuity Company of New York ("LNY") (together, "Lincoln"). Lincoln Life and LNY are insurance companies incorporated, respectively, in Indiana and New York. Lincoln Life and LNY are registered with the Securities and Exchange Commission ("SEC" or "Commission") as transfer agents pursuant to Section 17(A) of the Securities Exchange Act of 1934 ("Exchange Act").<sup>1</sup> Lincoln Life also is registered with the SEC as a broker/dealer and is a member of the National Association of Securities Dealers, Inc. ("NASD").

As you know, Lincoln performs recordkeeping activities for variable annuity and variable life insurance contracts ("contracts") that it issues. In the performance of these activities, Lincoln relies on the exclusion from the definition of "transfer agent," found in Section 3(a)(25) of the Exchange Act, for an insurance company and separate accounts that perform recordkeeping activities for contracts issued by the insurance company or the separate account (hereafter, the "insurance company exclusion.") The purpose of this letter is to request that Commission staff indicate that it would not recommend enforcement action to the Commission if

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<sup>1</sup> Lincoln Life registered as a transfer agent in October 1998; LNY registered as a transfer agent in April 1999. LNY is a wholly-owned subsidiary of Lincoln Life and is engaged solely in sales to persons residing in the state of New York.

Lincoln performs recordkeeping activities for contracts that are subsequently acquired by, but not originally issued by, Lincoln, and, in the performance of these activities, relies on the insurance company exclusion.

#### Description of Acquisition Activity

In the course of its business, Lincoln routinely purchases variable annuity and variable life insurance contracts originally issued by other U.S.-domiciled insurance companies. For example, in the last several years, Lincoln has purchased tax-sheltered annuity and individual life insurance and annuity businesses from other insurance companies. These acquisitions have been structured so that Lincoln assumes responsibility for the risks, and is entitled to the economic benefits of, the business purchased.

These acquisitions must be fully compliant with state insurance law and federal securities law requirements. For example, a typical acquisition includes a one-to-two year "fronting" period during which the seller would continue to issue policies of the type being bought by Lincoln. During the fronting period, the acquirer (Lincoln) seeks state insurance department approval for new contract forms. Until the acquirer has its own form approved, contracts issued to new policy holders would be written on the seller's paper. The new contracts that are issued are 100% reinsured by Lincoln (on an indemnity reinsurance basis) in the same manner as contracts that were outstanding as of the closing date of the acquisition. It should also be noted that, following the acquisition, the seller is prohibited by the terms of the transaction from engaging in the particular type of business that has been sold to Lincoln, and thus, in effect, is no longer engaged in that business.

From an economic standpoint, Lincoln assumes virtually all of the risk associated with contracts it has purchased,<sup>2</sup> and, from the standpoint of administering the contracts, treats all contracts owners in the same manner as the contracts for which Lincoln is the original issuer. Pursuant to administrative services agreements Lincoln enters into with the original contract issuer, Lincoln assumes responsibility for all aspects of contract administration, including responding to contract holder inquiries, processing changes in investment selections, applying additional contributions to existing policies, and ensuring that distributions are properly paid. In short, Lincoln performs all recordkeeping services in connection with the outstanding policies in the same manner as it performs these services for policies for which Lincoln is the original issuer.

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<sup>2</sup> In acquisitions structured as "assumption" transactions, state law permits contract holders to "opt out" of the assumption reinsurance. However, even as to contract holders who have opted out of the assumption, Lincoln takes full responsibility for the administration of the contracts and bears (through indemnity reinsurance) all of the general account risk on those contracts, e.g., the investment risk on funds allocated to "fixed" investment options, the risk that a guaranteed death benefit will exceed the contract's account value, and the risk that administrative costs will exceed expense charges deducted from contract account values.

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August 22, 2003  
Page 3

Request For Relief

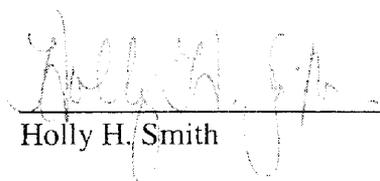
We believe that the rationale underlying the exclusion in Section 3(a)(25) of the Exchange Act for insurance companies should apply to the recordkeeping activities Lincoln performs for contracts it has acquired. Lincoln is acquiring securities businesses from issuers that were themselves entitled to rely on the insurance company exclusion from the transfer agent definition. In this regard, Lincoln can be said to be "stepping into the shoes" of the original issuers. Lincoln in fact performs all administrative services in connection with the acquired policies and business lines and the parties to the acquisitions intend to transfer all economic risks to Lincoln.

Accordingly, we request that the staff take a "no action" position that the recordkeeping activities described in this letter for variable annuity and variable life insurance contracts subsequently acquired by Lincoln from other insurance companies may be undertaken by Lincoln in reliance on the insurance company exclusion from the definition of transfer agent in Section 3(a)(25) of the Exchange Act.

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We appreciate the staff's consideration of this request. Please contact the undersigned at 202/383-0245 if you have any questions.

Sincerely,

  
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Holly H. Smith

cc: Lori Bucci, SEC  
Brian Burke, Lincoln