

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 13, 1994, and amended on March 30, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 9, 1995 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 809 North State Street, suite 215; Jackson, Mississippi 39202.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942-0573, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a New York corporation, registered under the Act on November 8, 1961. Applicant also was licensed as a small business investment company by the Small Business Administration ("SBA").

2. In 1973, applicant acquired certain oil and gas mineral rights and real estate from a small business company in exchange for the securities of that company held by applicant. By December 31, 1974, those assets constituted approximately 52 percent of the fair value of applicant's assets. At the 1975 annual meeting, stockholders adopted amendments to applicant's fundamental policies to allow applicant to concentrate its investment in real estate and oil and gas mineral rights and leases.

3. In 1980, Applicant defaulted on a subordinated debenture payable to the SBA ("SBA Indebtedness") which resulted in the acceleration of the entire SBA Indebtedness. Applicant and the

SBA entered into an agreement ("SBA Agreement") which extended the maturity of the SBA Indebtedness and replaced an earlier agreement with the SBA. On December 31, 1986, applicant defaulted on its principal and accrued interest payment obligations to the SBA. Applicant repaid the principal balance in cash in June 1988 and in September 1989, applicant transferred two tracts of property to the SBA for settlement of accrued interest. Applicant relinquished its license as a small business investment company to the SBA in September 1989.

4. At a 1993 special meeting, applicant's shareholders approved an amendment to applicant's fundamental policies to state that applicant's business shall consist of purchasing, selling, owning or holding oil, gas, or other mineral royalties or leases. Applicant does not anticipate any substantial income and/or loss in the future from investment in investment securities. Income is expected to be derived from the mineral interests held by applicant. Applicant now manages its mineral interests and real property holdings and proposes to continue in such business for the foreseeable future.

Applicant's Legal Analysis

1. Applicant believes that it is no longer an investment company by virtue of the exception in section 3(c)(9) of the Act. Section 3(c)(9) specifically exempts from the definition of investment company "[a]ny person substantially all of whose business consists of owning or holding oil, gas, or other mineral royalties or leases, or fractional interests therein, or certificates of interest or participation in or investment contracts relative to such royalties, leases, or fractional interests." Section 8(f) of the Act provides, in pertinent part, that whenever the SEC, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

2. Applicant believes it is appropriate for the SEC to deregister the applicant because it engages in section 3(c)(9) activities. Applicant's fundamental policy is similar to section 3(c)(9) since it provides that "The Company's business shall consist of purchasing, selling, owning or holding oil, gas, or other mineral royalties or leases, or fractional interests therein * * *." Applicant owns both the mineral rights and mineral royalties for certain properties and, for other properties, owns the mineral rights only. Its mineral rights are direct ownership

interests in minerals in the ground, and it receives income from mineral leases when it leases the mineral rights and mineral royalty income when the minerals are extracted. Applicant believes that these activities are the type of business referred to in section 3(c)(9), i.e., "owning or holding oil, gas, or other mineral royalties or leases."

3. As of December 31, 1993, 98.9 percent of the fair value of applicant's assets (exclusive of cash and land) consisted of mineral rights and leases. 10.5 percent of the fair value of applicant's assets consisted of land not incident to the mineral rights and leases. For the fiscal year ended December 31, 1993, other than interest income from cash in banks, 99 percent of applicant's income was derived from mineral lease royalties.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-9725 Filed 4-19-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21010; File No. 812-9226]

Great-West Life & Annuity Insurance Company, et al.

April 14, 1995.

AGENCY: U.S. Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Great-West Life & Annuity Insurance Company (the "Company"), The Great-West Life Assurance Company ("GWLAC"), and Retirement Plan Series Account (the "Separate Account").

RELEVANT ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the Company to deduct from the Separate Account the mortality and expense risk charge imposed under (1) flexible premium deferred individual variable annuity contracts ("Contracts") and (2) any other variable annuity contracts offered by the Company and made available through the Separate Account or through any other similar separate account(s) established by the Company, whether currently existing or hereafter created ("Other Separate Accounts"), which are substantially similar in all material

respects ("Future Contracts"). Applicants also request that the relief be extended to any other broker-dealer, whether currently existing or hereafter created, which may serve in the future as principal underwriter of Contracts or Future Contracts.

FILING DATE: The Application was filed on September 13, 1994 and amended on February 23, 1995 and March 21, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 9, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: SEC, Secretary, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Jordan Burt & Berenson, 1025 Thomas Jefferson Street, NW., suite 400 East, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Wendy Friedlander, Deputy Chief, at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company initially organized under the laws of the State of Kansas. In 1990, the Company redomesticated and is now organized under the laws of the State of Colorado. The Company, a wholly-owned subsidiary of the GWLAC, is qualified to do business in 49 states and the District of Columbia.

2. GWLAC, a life insurance company organized under the laws of Canada, will be the principal underwriter with respect to the Contracts. GWLAC is registered with the Commission under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

3. The Separate Account was established under the laws of the State of Colorado on January 25, 1994, as a

funding vehicle for the Contracts and is registered under the Act as a unit investment trust. The Separate Account initially will have twelve investment divisions ("Divisions") available for allocation of contributions by contractowners ("Owners"). Each Division invests solely in a corresponding portfolio of Maxim Series Fund, Inc., an open-end management investment company registered under the Act. The shares of each portfolio may also be offered to other Separate Accounts.

4. Interests under the Contracts are registered under the Securities Act of 1933. The Contracts will receive favorable tax treatment under Section 408(b) of the Internal Revenue Code ("Code") as individual retirement annuities and will be available for an initial contribution of at least \$3,500 rolled-over from retirement plans which qualify under Section 401(k) of the Code. Additional contributions may be made in amounts of at least \$250. The Contracts provide that contributions can accumulate on a variable basis, a guaranteed basis, or on a combination of both. The Contracts also will offer several annuity options payable on a variable basis, a fixed basis, or on a combination of both.

5. The Company will not impose a sales charge or a Contract maintenance charge in connection with the Contracts.

6. A \$50 charge will be imposed on any Contract surrendered in whole during the first 12 months after issue, excluding the "free look" period. A \$25 charge will be imposed on any Contract surrendered in part during the first 12 months after issue. These charges reflect the actual expenses associated with such surrenders which the company expects to incur and would be assessed in reliance on Rule 269-1 under the Act.¹

7. At any time prior to the annuity commencement date, Owners may make unlimited transfers between Divisions. The Company does not charge any fee for these transfers.

8. The Company may make a deduction for premium taxes imposed by states or other governmental entities, either (i) when a surrender or cancellation occurs, or (ii) at the annuity commencement date. Currently, these taxes range up to 2.5%.

9. The Company will impose a mortality and expense risk charge of up to .75% as compensation for bearing certain mortality and expense risks assumed under the Contracts. Contracts

having a balance of: (1) \$0 to \$9,999.99 will be subject to a mortality and expense risk charge equal to .75%; (2) \$10,000 to \$24,999.99 will be subject to a mortality and expense risk charge equal to .50%; and (3) \$25,000 to \$49,999.99 will be subject to a mortality and expense risk charge equal to .25%. No mortality and expense risk charge will be imposed for an account balance of \$50,000 or greater. The levels of these charges are guaranteed and will not be increased. Of the amounts charged for mortality and expense risk, where the total charge is: (1) .75%: 0.60% is a mortality risk charge and 0.15% is an expense risk charge; (2) .50%: 0.40% is a mortality risk charge and 0.10% is an expense risk charge; and (3) .25%: 0.20% is a mortality risk charge and 0.05% is an expense risk charge.

10. These annual charges will be assessed daily and will be based on the assets of the Separate Account. The level of the mortality and expense risk charge applicable to the Contract during the first calendar year will be based upon the initial account balance of the Contract. The initial account balance used to determine the appropriate mortality and expense risk charge level will include both fixed and variable money; however, the charge will only apply to the variable portion.

11. The level of mortality and expense risk charge applicable in subsequent calendar years will be based upon the account balance of the Contract as of December 31 of the previous calendar year.

12. The mortality risk to be borne by the Company under the Contracts arises from its obligations to make annuity payments, in the case where the life annuity is selected, regardless of how long an annuitant may live. The mortality risk under the Contracts, where a life annuity with a life contingency is selected, is the risk that annuitants will live longer than the Company's actuarial projections indicate resulting in higher than expected annuity payments.

13. The expense risk to be borne by the Company under the Contracts is the risk that the actual administrative expenses incurred in connection with the Contracts may exceed the anticipated administrative expenses.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of

¹The Applicants represent that they will amend the application during the notice period to include this representation.

the Act. Sections 26(a)(2)(C) and 27(c)(2) of the Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a charge up to .75% from (i) the assets of the Separate Account with respect to the Contracts and Future Contracts and (ii) from the assets of Other Separate Accounts in connection with Future Contracts, to compensate the Company for the assumption of mortality and expense risks. In addition, Applicants also request that the exemptive relief requested extend to any other broker-dealer, whether currently existing or hereinafter created, which may serve in the future as principal underwriter of Contracts or Future Contracts. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. With respect to the level of the mortality and expense risk charge, Applicants hereby represent that they have reviewed publicly available information regarding the aggregate level of mortality and expense risk charges under variable annuity contracts comparable to the Contracts currently being offered in the insurance industry, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, Applicants further represent that the mortality and expense risk charge contemplated under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain at their principal office and will make available to the Commission upon request a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey.

4. Similarly, prior to issuing any Future Contracts, Applicants will

represent that the mortality and expense charges under any Future Contracts will be within the range of industry practice for comparable contracts. Applicants will maintain at their principal office and will make available to the Commission upon request a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey.

5. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available for any lawful purpose including shortfalls in the costs of distributing the Contracts. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and Owners. The Company represents that the basis for that conclusion is set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.

6. Applicants further represent that the Separate Account, and any Other Separate Accounts, will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any such fund, formulate and approve any plan under Rule 12b-1 under the Act to finance distribution expenses.

7. Applicants assert that extending relief to Future Contracts, Other Separate Accounts, and any other broker-dealer, whether currently existing or hereinafter created, which may serve in the future as principal underwriter of Contracts or Future Contracts is appropriate in the public interest because it would promote competitiveness in the variable annuity market by eliminating the need for the Company to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair the Company's ability to effectively take advantage of business opportunities as they arise. If the Company were repeatedly required to seek exemptive relief with respect to the same issues addressed in the Application, investors would not receive any additional benefit or protection. Therefore, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-9842 Filed 4-19-95; 8:45 am]

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[Rel. No. IC-21011; File No. 812-9272]

Montgomery Asset Management, L.P. et al.

April 14, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act" or "Act").

APPLICANTS: Montgomery Asset Management, L.P. ("Montgomery") and The Montgomery Funds III (the "Fund").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order of exemption to the extent necessary to permit shares of the Fund and shares of certain other investment companies for which Montgomery or an affiliate of Montgomery serves as investment adviser, administrator, manager, principal underwriter or sponsor (collectively with the Fund, the "Funds") to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies and qualified pension and retirement plans.

FILING DATE: The application was filed on October 12, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on May 9, 1995, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a