

advantage of business opportunities as these opportunities arise. Applicants further submit that the requested relief is consistent with the purposes of the Act and the protection of investors for the same reasons. Applicants assert that if the Company were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby.

5. Applicants represent that the mortality risk is assumed by virtue of the annuity rates which cannot be changed after issuance of the Contract and the death benefit guaranteed in the Contract. Also, because the Contract Maintenance Charge and the Administrative Expense Charge will not increase regardless of the actual costs incurred, the Company assumes an expense risk. If the Mortality or Expense Risk Charge is insufficient to cover the actual costs, the Company will bear the loss. To the extent that the charge is in excess of actual costs, the Company, at its discretion, may use the excess to offset losses when the charge is not sufficient to cover expenses.

6. Applicants assert that the Mortality and Expense Risk Charge is reasonable in relation to the risks assumed by the Company under the Contracts, and is consistent with the protection of investors insofar as it is designed to be competitive while not exposing the Company to undue risk of loss. Applicants also represent that the Mortality and Expense Risk Charge is reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is based on their analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. The Company will maintain at its home office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the Company's comparative survey. Similarly, prior to relying on the exemptive relief requested herein with respect to any Materially Similar Contracts funded by the Variable Account or other separate account established by the Company, Applicants will determine that the mortality and expense risk charge under such Materially Similar Contracts will be reasonable in relation to the risks assumed by the Company and reasonable in amount as determined by industry practice with respect to

comparable annuity products. The Company will maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making these determinations.

7. Applicants acknowledge that the Withdrawal Charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the Mortality and Expense Risk Charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the Withdrawal Charge. The Company has concluded, however, that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contractowners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its administrative offices and will be available to the Commission. Similarly, prior to relying on any exemptive relief granted herein with respect to any Materially Similar Contracts issued by the Variable Account or other separate accounts established by the Company, Applicants will determine that there is a reasonable likelihood that the distribution financing arrangement will benefit the Variable Account (or such other separate account) and its investors. The Company will maintain and make available to the Commission upon request a memorandum setting forth the basis of such determination.

8. The Company represents that the Variable Account (and any other separate account of the Company that relies on the relief sought in this application) will invest only in management investment companies which undertake, in the event such company adopts a plan pursuant to Rule 12b-1 adopted under the 1940 Act to finance distribution expenses, to have their board of directors (or trustees), a majority of whom are not interested persons of such company, formulate and approve any such plan under Rule 12b-1.

#### Conclusion

Based upon the facts and for the reasons set forth above, Applicants submit that the exemptions requested 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 1940 Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-21700 Filed 8-31-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21322; File No. 812-9420]

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

August 28, 1995.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for amendment to order granting exemptions pursuant to the Investment Company Act of 1940 (the "1940 Act").

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

**RELEVANT 1940 ACT SECTIONS:** Order requested pursuant to Section 6(c) of the 1940 Act to amend order granting exemptions from the provisions of Sections 26(a) and 27(c)(2) thereof.

**SUMMARY OF APPLICATION:** Applicants seek an amendment to an order that permits deduction of mortality and expense risk charges from the assets of the Separate Account in connection with the issuance and sale of certain group variable annuity contracts ("Existing Contracts").<sup>1</sup> The amendment will permit the deduction of mortality and expense risk charges from the assets of any other separate account established in the future by the Company ("Future Accounts," together with the Separate Account, "Accounts"), in connection with the issuance of certain group variable annuity contracts that are substantially similar in all material respects to the Existing Contracts ("Future Contracts," together with Existing Contracts, "Contracts").

**FILING DATE:** The application was filed on January 9, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30

<sup>1</sup> See *Great-West Life & Annuity Insurance Company, et al.*, Inv. Co. Act Rel. No. 13998 (June 19, 1984) (notice) and Inv. Co. Act Rel. No. 14038 (July 17, 1984) (order); file no. 812-5818.

p.m. on September 18, 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 may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Applicants, c/o Beverly A. Byrne, Assistant Counsel, Great-West Life & Annuity Insurance Company, Great-West Life Center, 8515 East Orchard Road, Englewood, Colorado 80111.

**FOR FURTHER INFORMATION CONTACT:** Kevin M. Kirchoff, Senior Counsel, or Brenda D. Sneed, Chief, Office of Insurance Products (Division of Investment Management), at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

**Applicant's Representations**

1. The Company is a stock life insurance company originally organized under the laws of the State of Kansas as the National Interment Association. In September of 1990, the Company redomesticated and is now organized under the laws of the State of Colorado. The Company, a wholly-owned subsidiary of Great-West Life, is licensed to sell insurance and annuities, and is qualified to do business in 49 states and the District of Columbia.

2. The Separate Account was established by the Company under the laws of the State of Kansas on November 15, 1983. As a result of the Company's redomestication to Colorado, the Separate Account now exists pursuant to Colorado law.

3. Great-West Life, a life insurance company organized under the laws of Canada, is the principal underwriter of the Existing Contracts. Great-West Life is registered with the Commission as a broker-dealer pursuant to the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the National Association of Securities Dealers, Inc. The Existing Contracts are offered through licensed insurance agents of the Company who are registered representatives of either Great-West Life of a broker-dealer registered pursuant to the 1934 Act with which Great-West Life has entered into a dealer agreement.

4. The Separate Account is an investment account of the Company

which acts as a funding vehicle for the Existing Contracts. The assets of the Separate Account are owned by the Company, but segregated from the other assets of the Company, and the obligations under the Existing Contracts are obligations of the Company. The income, gains and losses incurred on the assets in the Separate Account, whether or not realized, are credited to or charged against the Separate Account without regard to other income, gains or losses of the Company.

5. The Separate Account currently has seventeen investment divisions ("Investment Divisions") available for the purpose of investing contributions ("Contributions") by, or on behalf of, participants in the group ("Participants") received under the Existing Contracts. Each Investment Division invests solely in a corresponding portfolio of Maxim Series Fund, Inc., TCI Portfolios, Inc. or Fidelity Variable Insurance Products Fund, each of which has a different investment objective.

6. The Existing Contracts provide that, prior to the annuity commencement date, Contributions can accumulate on a variable basis, fixed basis, or a combination of both. Participants of Existing Contracts allocate Contributions to the Investment Divisions of their choice. The value under an Existing Contract varies with the investment performance of the applicable Investment Divisions of the Separate Account. Therefore, the owner of an Existing Contract, rather than the Company, assumes the risk of investment gain or loss on investments.

7. Participants of Existing Contracts may specify the date on which they desire annuity payments to begin, and may later change the date through a written request. The Existing Contracts offer several annuity options payable on a variable basis, a fixed basis, or a combination of both.

8. The Existing Contracts provide that the Company may deduct an annual contract maintenance charge of not more than sixty dollars from each Participant's account.

9. The Company currently intends to itself pay any premium tax relating to the Existing Contracts that is levied by any governmental entity, but has reserved the right to deduct any such tax from account values after giving notice to all Participants.

10. No sales charge is deducted from purchase payments, however, a contingent deferred sales charge ("CDSC") is deducted upon total or partial surrender of an Existing Contract, other than at death or annuitization. In some circumstances an

amount against which a CDSC is not assessed ("Free Amount") applies. The Free Amount applicable to a given Existing Contract will not exceed ten percent of the Participant's annuity account value on December 31 of the prior year. All distributions in excess of an applicable Free Amount during a calendar year, are subject to a CDSC.

11. The amount of CDSC, which in no event will exceed 8.5%, is as follows:

(1) The CDSC equals 6% of the amount distributed in excess of the Free Amount (though the cumulative total of all such charges will not exceed 6% of all Contributions made within 72 months prior to the date of the particular distribution), for: (i) Section 401(k) retirement plans where the employer does not also maintain a Section 403(b) or Section 457 group contract with the Company; (ii) Section 401(a) plans where the employer also maintains a Section 403(b) group contract; and (iii) Section 403(b) retirement plans, other than employer-sponsored plans issued after May 1, 1992;

(2) For: (i) group contracts issued in exchange for group tax-sheltered annuity or group deferred compensation annuity contracts of Great-West Life, and (ii) Section 457 group contracts issued prior to May 1988 and not amended; the total of all CDSCs will not exceed (a) 6% of an amount equal to all Contributions made within 72 months prior to the date of the particular distribution, plus (b) an amount which is the result of multiplying the amount initially applied to a Participant annuity account from the exchanged contract by an appropriate percentage, or an amount equal to a percentage of the amount distributed in excess of the Free Amount, as chosen from the following chart:

No. of years of coverage of the participant	Percentage
Less than 5 .....	6.
At least 5 but less than 10 .....	5.
At least 10 .....	4;

and.

(3) For: (i) Section 403(b) employer-sponsored plans issued after April 30, 1992; (ii) Section 457 group contracts issued after April 30, 1988; (iii) Section 457 group contracts issued prior to May 1988 but amended to incorporate this provision; and (iv) Section 401(a) plans where the employer also maintains a Section 457 group contract; the CDSC on amounts distributed in excess of the Free Amount will vary based on the following table:

No. of years of participation in the separate account	Percentage
0-4 .....	5
5-9 .....	4
10-14 .....	3
15 or more .....	0

12. The Company assumes mortality and expense risks under the Existing Contracts because of its contractual obligation to make annuity payments, in the case of a life annuity, regardless of how long an annuitant may live. The mortality risk is the risk that, upon selection of a life annuity which has a life contingency, annuitants will live longer than the Company's actuarial projections indicate, resulting in higher than expected annuity payments. The expense risk is the risk that actual administrative expenses involved in administering the Existing Contracts may exceed the anticipated administrative expenses.

13. As compensation for assuming these mortality and expense risks, the Company assesses a daily charge at an annual effective rate of 1.25% of the net asset value of the Separate Account ("Mortality and Expense Risk Charge").

14. When the accounts derived from the Mortality and Expense Risk Charge are insufficient to cover the actual costs resulting from the mortality and expense risk, the Company bears the costs and realizes a loss. When the amounts derived from the Mortality and Expense Risk Charge are more than sufficient, the excess is a profit that is added to the Company's surplus and used for any lawful purpose, including the costs of distributing the Existing Contracts.

**Applicants' Legal Analysis and Conditions**

1. Pursuant to Section 6(c) of the 1940 Act the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption 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 the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are

deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants previously received exemptive relief ("Previous Exemption") pursuant to Section 6(c) of the 1940 Act exempting them from Sections 26(a) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the Mortality and Expense Risk Charge from the assets of the Separate Account.<sup>2</sup> Applicants now request an amendment to the Previous Exemption to permit the deduction of the Mortality and Expense Risk Charge from the assets of any other separate account established in the future by the Company, in connection with the issuance of certain variable annuity group contracts that are substantially similar in all material respects to the Existing Contracts. Without the requested exemptive relief, Applicants would have to request and obtain such relief for each Future Account the Company establishes to fund Future Contracts. Applicants assert that such additional requests for exemptive relief would present no issues under the 1940 Act that have not been addressed by either the Previous Exemption or the application that is the subject of this notice.

4. Applicants assert that the Mortality and Expense Risk Charge of 1.25% is within the range of industry practice for comparable annuity products. Applicants state that this determination is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge guarantees, guaranteed annuity rates and the markets in which the Contracts or offered. Applicants undertake to maintain a memorandum, available to the Commission upon request, outlining the methodology underlying this representation.

5. Applicants represent that Future Contracts will provide for equal or lower Mortality and Expense Risk Charge than the Existing Contracts. The amount of the Mortality and Expense Risk Charges will be stated in each

<sup>2</sup> *Great West Life & Annuity Insurance Company, et al.*, Inv. Co. Act Rel. No. 13998 (June 19, 1984) (notice) and Inv. Co. Act. Rel. No. 14038 (July 17, 1984) (order).

Future Contract, and will be guaranteed not to increase.

**Conclusion**

For the reasons summarized above, Applicants represent that the exemptions requested 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 1940 Act.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 95-21755 Filed 8-31-95; 8:45 am]

BILLING CODE 8010-01-M

**SMALL BUSINESS ADMINISTRATION**

[(Declaration of Disaster Loan Area #2804)]

**Vermont; Declaration of Disaster Loan Area**

As a result of the President's major disaster declaration on August 16, 1995, I find that Caledonia, Chittenden, Essex, Lamoille, Orleans, and Washington Counties in the State of Vermont constitute a disaster area due to damages caused by excessive rain and flooding on August 4 through 6, 1995. Applications for loans for physical damages may be filed until the close of business on October 16, 1995, and for loans for economic injury until the close of business on May 16, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Addison, Franklin, Grand Isle, and Orange in the State of Vermont; Coos and Grafton in New Hampshire; and Clinton and Essex in New York.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere .....	8.000
Homeowners without credit available elsewhere .....	4.000
Businesses with credit available elsewhere .....	8.000
Businesses and non-profit organizations without credit available elsewhere .....	4.000