

judgment of the Board, including a majority of the noninterested Board members, to the scope and quality of services previously provided. In the event of any material change in personnel providing material services pursuant to the New Subadvisory Agreement, the New Subadvisor will apprise and consult with the Board to make sure that the Board, including a majority of the noninterested members, is satisfied that the services provided will not be diminished in scope or quality.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23006; File No. 812-10750]

### Great-West Life & Annuity Insurance Company, et al; Notice of Application

January 22, 1998.

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

**ACTION:** Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered unit investment trusts to substitute shares of certain registered open-end investment companies for shares of certain registered investment companies currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutions.

**APPLICANTS:** Great-West Life & Annuity Insurance Company ("GWL&A"), Maxim Series Account (the "Maxim Account"), Pinnacle Series Account (the "Pinnacle Account," together with GWL&A and the Maxim Account, the "Separate Accounts"), Maxim Series Fund, Inc. ("Maxim Series Fund") and BenefitsCorp Equities, Inc. ("BCE").

**FILING DATE:** The application was filed on August 8, 1997, and amended and restated on December 9, 1997.

**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 should be received by the Commission by 5:30 p.m. on February 17, 1998, 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 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Jordan Burt Berenson & Johnson, LLP, 1025 Thomas Jefferson Street, N.W., Suite 400 East, Washington, D.C. 20007-0805, Attention: Josephine Cicchetti, Esq.

**FOR FURTHER INFORMATION CONTACT:** Ethan D. Corey, Senior Counsel, at (202) 942-0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942-0672, 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 Public Reference Branch of the Commission, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942-8090).

#### Applicants' Representations

1. GWL&A, a Colorado stock life insurance company, does business in the District of Columbia, Puerto Rico, and in all states of the United States, except New York.

2. GWL&A is wholly-owned by The Great-West Life Assurance Company, which is a subsidiary of Great-West Lifeco Inc., an insurance holding company. Great-West Lifeco Inc. is a subsidiary of Power Financial Corporation of Canada, which is controlled by Power Corporation of Canada.

3. The Maxim Account, a separate account established by GWL&A under Colorado law, is registered with the Commission as a unit investment trust. The Maxim Account is a distinct investment account of GWL&A which acts as a funding vehicle for certain individual flexible premium variable deferred annuity contracts (the "Maxim Contracts").

4. Currently there are three different Maxim Contracts issued under the Maxim Account. Two of the Maxim Contracts ("MSA-1" and "MSA-2") are

no longer sold, have fewer than 5,000 participants and no longer file post effective amendments in reliance upon a no-action letter. MSA-1 has five investment divisions, each of which invests exclusively in one of the corresponding portfolios of Maxim Series Fund, an open-end management investment company. MSA-2 has seven investment divisions, five of which invest solely in corresponding portfolios of Maxim Series Fund and two of which invest solely in corresponding portfolios of American Century Variable Portfolios, Inc. ("American Century"), another open-end management investment company. The third Maxim Contract ("MVP") has fifteen investment divisions, thirteen of which invest solely in corresponding portfolios of Maxim Series Fund and two of which invest solely in corresponding portfolios of American Century.

5. The Maxim Account is used in connection with Maxim Contracts that may be issued under retirement plans which qualify for federal tax benefits under Sections 401 and 408 of the Internal Revenue Code (the "Code") as individual retirement accounts and under other retirement plans which do not qualify under the Code.

6. The Pinnacle Account, a separate account established by GWL&A under Colorado law, is registered with the Commission as a unit investment trust. The Pinnacle Account is a distinct investment account of GWL&A which acts as a funding vehicle for certain single premium variable life insurance policies (the "Policies," together with the Maxim Contracts, the "Contracts").

7. The Policies have five investment divisions, each of which invests exclusively in one of the corresponding portfolios of the Maxim Series Fund.

8. The Pinnacle Account no longer files post-effective amendments to its registration statement in reliance upon a no-action letter granted to GWL&A and the Pinnacle Account.

9. BCE is the principle underwriter and distributor of MVP. The Policies, MSA-1, and MSA-2 are not currently sold and there is no need for an underwriter. BCE 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.

10. Of the Contracts and Policies, only MVP is still sold. MVP may be issued under retirement plans which qualify for federal tax benefits under Sections 401 and 408 of the Code as individual retirement accounts and under other retirement plans which do not qualify under the Code.

11. All of the Contracts expressly reserve GWL&A's right, both on its own behalf and on behalf of the Separate Accounts, to eliminate investment divisions, combine two or more investment divisions, or substitute one or more underlying funds for others in which its investment divisions are invested.

12. GWL&A, on its own behalf and on behalf of the Pinnacle Account and the Maxim Account, proposes to exercise its contractual right to eliminate the Maxim Series Fund Total Return Portfolio ("Total Return Portfolio") as an investment division under the Policies and MSA-1. GWL&A also proposes, on its behalf and on behalf of the Maxim Account to exercise its contractual right to eliminate the Total Return Portfolio and the American Century Balanced Portfolio (collectively, the "Eliminated Portfolios") as investment divisions under MVP and MSA-2.

13. With respect to MVP, GWL&A proposes to substitute shares of the Maxim Series Fund Maxim INVESCO Balanced Portfolio (the "Balanced Portfolio") for shares of the Eliminated Portfolios. In addition, with respect to MSA-1 and MSA-2, GWL&A proposes to substitute shares of the Maxim Series Fund Maxim Stock Index Portfolio (the "Index Portfolio," together with the Balanced Portfolio, the "Substituted Portfolios") for shares of the Eliminated Portfolios. Finally, with respect to the Policies, GWL&A proposes to substitute shares of the Index Portfolio for shares of the Total Return Portfolio. When discussed together, the Pinnacle Account and the Maxim Account substitutions will be collectively referred to as the "Substitution." Applicants believe the Substitution will benefit the Contract owners by eliminating portfolios with below average historical return.

14. The investment objective of the Total Return Portfolio is to obtain the highest possible total return, through a combination of income and capital appreciation, consistent with reasonable risk. The investment objective of the American Century Balanced Portfolio is capital growth and current income. The investment objective of the Index Portfolio is to provide investment results, before fees, that correspond to the total return of the Standard & Poor's ("S&P") 500 Index and the S&P Mid-Cap Index, weighted according to their respective pro-rata shares of the market. The investment objective of the Balanced Portfolio is to achieve a high total return on investment through capital appreciation and current income.

15. As of September 30, 1997, the Maxim Total Return Portfolio has provided 1, 5 and 10 year (or since investment division inception) total returns of (i) 24.91%, 12.01% and 9.30% to MSA-1 Contract owners; (ii) 24.72%, 11.87% and 9.52% to MSA-2 Contract owners; (iii) 24.95% and 9.39% to MVP Contract owners; and (iv) 25.81%, 12.87% and 12.43% to Pinnacle Policy owners.<sup>1</sup> The American Century Balanced Portfolio has provided 1, 5 and 10 year (or since investment division inception) total returns of 19.20%, 10.56% and 10.23% to MSA-2 Contract owners. The Maxim Stock Index Fund has provided 1, 5 and 10 year (or since investment division inception) total returns of: (i) 36.68%, 17.00% and 11.37% to MSA-1 Contract owners; (ii) 37.40%, 17.21% and 11.41% to MSA-2 Contract owners; and (iii) 38.52%, 18.31% and 12.42% to Pinnacle Policy owners. The Maxim INVESCO Balanced Portfolio has provided total return of 28.26% to MVP Contract owners since its inception on October 1, 1996. The Maxim INVESCO Balanced Portfolio was created to copy the investment strategy of the INVESCO Balanced Fund and is sub-advised by the same portfolio manager that advises the INVESCO Balanced Fund. The one-year and since-inception total return of the INVESCO Balanced Fund are 25.75% and 20.63%, respectively. The expense level of the INVESCO Balanced Fund is 1.29%; the expense level of the Maxim INVESCO Balanced Portfolio is 1.00%.

16. Contract owners will be advised of their ability to transfer their Contract value to the remaining investment divisions or to leave their Contract value in the Eliminated Portfolios for an automatic substitution on the date that GWL&A will schedule the Substitution to occur (the "Automatic Selection Date"). As of the Automatic Selection Date, all Contract values allocated to the Eliminated Portfolios automatically will be reallocated to the Substituted Portfolios. No Eliminated Portfolio will accept additional premium payments (i.e., new money or transfers) on or after the Automatic Selection Date. Contract owners can transfer their assets from the Substituted Portfolios to any remaining investment division available under their Contracts. No sales load deductions or transfer charges will be assessed in connection with any transfers among the portfolios because of the Substitution or otherwise.

<sup>1</sup> Total return figures for the Pinnacle Policies do not reflect the deduction of cost of insurance charges.

17. Applicants represent that, as noted before, the total expenses of the Balanced Portfolio currently are 1.00%, which is the same as the total expenses of the American Century Balanced Portfolio. Therefore, MVP owners with investments in the American Century Balanced Portfolio will not pay greater costs at the portfolio level. The total expenses of the Maxim Total Return Portfolio are 0.60%. Should MVP owners with current allocations in the Maxim Total Return Portfolio determine that another investment is more appropriate, due to the change in portfolio expenses, those owners of MVP can transfer their assets to any of the remaining twelve investment divisions available under their Contract.

18. With respect to MSA-1 and MSA-2, Applicants represent the total expenses of the Index Portfolio are 0.60%. This is less than the total expenses of the American Century Balanced Portfolio and equal to the total expenses of the Maxim Total Return Portfolio. Should MSA-1 and MSA-2 Contract owners with current allocations in the Eliminated Portfolios determine that another investment is more appropriate for their needs, such Contract owners can transfer their assets to any of the remaining investment divisions available under their respective Contracts.

19. Policy owners will not incur any additional expenses at the policy level. As stated above, the total expenses of the Index Portfolio are equal to the total expenses of the Maxim Total Return Portfolio. Should Policy owners with current allocations in the Eliminated Portfolio determine that another investment is more appropriate for their needs, such Policy owners can transfer their assets to any of the remaining investment divisions.

#### **Applicants' Legal Analysis And Conditions**

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(b) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment

costs or other charges will not be incurred due to unapproved substitutions of securities.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the Substitution. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protection for which Section 26(b) was designed. Applicants believe the Substitution will benefit MVP and MSA-2 owners by eliminating two portfolios with below-average historical returns and consolidating their investments in portfolios which have investment objectives similar to the Eliminated Portfolios. MSA-1 owners and Policy owners will also benefit because of the elimination of a poorly performing portfolio and the consolidation of their investments in a portfolio which has investment objectives similar to the Total Return Portfolio.

3. Any Contract owner who does not want his or her assets allocated to the Substituted Portfolios would be able to transfer assets to any one of the other investment divisions available under their Contract without charge prior to or after the Automatic Selection Date.

4. Applicants represent that the Substitution will be effected at net asset value in conformity with Sections 22(c) and 22(g) of the 1940 Act and Rule 22c-1 thereunder. The Substitution may be effected primarily for cash, but also may involve partial redemptions in-kind of securities ("Related Transactions"). The use of in-kind redemptions in conformity with Section 22(g) of the 1940 Act would alleviate the impact of the brokerage fees and expenses upon GWL&A or the investment adviser or sub-adviser of the Substituted Portfolio, as these entities will bear all expenses related to the Substitution. The Related Transactions will be effected to the extent consistent with the investment objectives and any applicable diversification requirements.

5. GWL&A or the investment adviser of the Substituted Portfolios will assume the transfer and custodial expenses and legal and accounting fees incurred with respect to the Substitution. Contract owners will not incur any fees or charges as a result of the transfer of account values from any portfolio. Applicants represent that there will be no increase in the Contract or Separate Account fees and charges after the Substitution. Applicants further represent that the Substitution is designed to avoid any adverse federal income tax effect on Contract owners or Policy owners.

6. Section 17(a)(1) of the 1940 Act prohibits any affiliated person or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

7. Section 17(b) of the 1940 Act authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

8. Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting the Related Transactions from the provisions of Section 17(a) of the 1940 Act.

9. Applicants represent that the terms of the Substitution are reasonable and fair and do not involve overreaching on the part of any person concerned. The Substitution will be effected at the net asset value of the securities involved and the interests of Contract owners will not be diluted. In-kind redemptions will alleviate some of the expenses involved with the Substitution and only will be used to the extent they are consistent with the investment objectives and applicable diversification requirements of the affected portfolios. All in-kind redemptions will be conducted in a manner conforming with the conditions of Rule 17a-7 under the 1940 Act.

10. Applicants represent that the Substitution and the Related Transactions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of Section 17(b).

#### Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and Related Transactions should be granted.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39570; File No. SR-Amex-98-2]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., To Revise the Exchange's Equity Fee Schedule To Include Transactions in DIAMONDS

January 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 12, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to revise its Equity Fee Schedule to reflect to transaction charges that will be imposed on trades in the newly listed and traded product called DIAMONDS.<sup>TM</sup> The Exchange commenced trading in DIAMONDS on January 20, 1998.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).