

MEMO# 14175

November 26, 2001

SEC ORDER AND STATEMENT CONCERNING REGISTRATION STATEMENT OF AN ALL-ELECTRONIC VARIABLE ANNUITY INSURANCE PRODUCT

[14175] November 26, 2001 TO: ELECTRONIC COMMERCE ADVISORY COMMITTEE No. 15-01 SEC RULES COMMITTEE No. 94-01 TECHNOLOGY ADVISORY COMMITTEE No. 13-01 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 4-01 RE: SEC ORDER AND STATEMENT CONCERNING REGISTRATION STATEMENT OF AN ALL-ELECTRONIC VARIABLE ANNUITY INSURANCE PRODUCT The Securities and Exchange Commission has issued an order declaring effective under Section 8(a) of the Securities Act of 1933 a registration statement for an “electronic-only” variable annuity insurance product. The Commission also issued a statement of the Commissioners regarding the order. These documents are attached and are described below. 1 The Commission’s order declaring the registration statement effective notes that the issuer’s registration statement raises novel issues. The order adds that the Commission has revisited its interpretive releases on the use of electronic media for delivery purposes in light of the enactment of the Electronic Signatures in Global and National Commerce Act (E-SIGN), and is currently reviewing whether its previous pronouncements need modification. The Commission’s decision to accelerate the effective date of the registration statement was by a divided vote, with Commissioner Hunt dissenting. In his statement, Commissioner Hunt criticized the Commission’s actions and expressed concern with the issuer’s decision not to provide investors with separate notice of electronic delivery of required disclosure documents, as required by Commission interpretive positions. Specifically, Commissioner Hunt noted that the issuer’s failure to commit to provide notice to investors that a prospectus, proxy statement, or confirmation has been posted in an investor’s personal file located on the issuer’s web site is, in his view, inconsistent with the protection of investors and prior Commission guidance. Chairman Pitt and Commissioner Unger, while acknowledging Commissioner Hunt’s concerns, stated that other pertinent considerations went into their decision to declare the 1 In re The American Separate Account 5 of the American Life Insurance Company of New York, SEC Release Nos. 33-8027; 34-44980; IC-25243 (Oct. 25, 2001); and Statements Concerning the Order Declaring Effective the Registration Statement of the American Life Separate Account 5 of The American Life Insurance Company of New York, SEC Release Nos. 33-8028; 34- 44981; IC-25244 (Oct. 25, 2001). These documents are also available from the SEC’s website at www.sec.gov/rules/other/33-8027.htm (order) and www.sec.gov/rules/other/33-8028.htm (statement). 2 issuer’s registration statement effective. These include: (1) the extent to

which the registration statement meets the disclosure requirements of the Securities Act and the issuer has complied with the Commission's disclosure suggestions; (2) whether the procedural posture is the most appropriate for plenary consideration of the issues implicated; (3) whether, in light of the enactment of E-SIGN after the Commission's most recent interpretive release on the use of electronic media for delivery, it would be fair to the issuer to stop its transaction without full consideration of the legal and economic consequences of Commission intervention; (4) the extent of the disclosure the issuer will give to potential investors about the novel issues raised by the registration statement; and (5) whether full-scale consideration of these issues was the wisest use of the Commission's resources at this time. Chairman Pitt and Commissioner Unger added that although they do not share Commissioner Hunt's view as to the implications of their action, their decision reflects the particular facts and circumstances presented by the offering, and that one should not read the Commission's order as predetermining the outcome in any other circumstance. Barry E. Simmons Associate Counsel Attachment (in .pdf format)

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