



U.S. Securities and Exchange Commission
**Division of Investment
Management**

March 17, 2023

VIA ELECTRONIC MAIL

**RESPONSE OF CHIEF ACCOUNTANT'S OFFICE
DIVISION OF INVESTMENT MANAGEMENT**

Stephen E. Roth
Eversheds Sutherland (US) LLP
Email: steveroth@eversheds-sutherland.com

Re: Fidelity & Guaranty Life Insurance Company and Fidelity & Guaranty Life Insurance Company of New York

By letter dated March 6, 2023, you request permission under Regulation S-X 3-13 (“Rule 3-13”) for Fidelity & Guaranty Life Insurance Company (“F & G Life”) and Fidelity & Guaranty Life Insurance Company of New York (“F & G Life of NY”) (each the “Company” and together the “Companies”) to file audited financial statements prepared in accordance with statutory accounting principles¹ (“SAP”), in place of financial statements prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”), in registration statements on Form S-1 filed in the future for certain contracts that are standalone index-linked annuity contracts or combination annuity contracts that offer both variable investment options as well as registered index-linked options (the “Contracts”) in satisfaction of the financial information required by Form S-1, including the requirements of Items 11(e), 11(g), and 16(b) of Form S-1, as described in your letter.

Background

You state that F & G Life is a stock life insurance company domiciled in the State of Iowa that is subject to supervision by the Iowa Insurance Division. You also state that F & G Life of NY, a wholly-owned subsidiary of F & G Life, is a stock life insurance company domiciled in the State of New York that is subject to regulation by the Department of Financial Services of the State of New York. F & G Life and F & G Life of NY are indirect wholly-owned subsidiaries of Fidelity National Financial, Inc. (“FNF”), an insurance holding company that is registered under the Securities Exchange Act of 1934 (the “Exchange Act”) and files periodic reports under the Exchange Act.

¹ You note that these principles are those that are prescribed or permitted by F & G Life’s and F & G Life of NY’s domiciliary state regulators.

You state that there are four intermediate parent companies between F & G Life and FNF that are directly or indirectly wholly owned by FNF and that one intermediate parent company, F & G Annuities & Life, Inc. (“FGAL”), is registered under the Exchange Act and files periodic reports under the Exchange Act. You add that none of the other intermediate parent companies are registered under the Exchange Act nor do they file periodic reports under the Exchange Act.

You state that FNF and FGAL prepare GAAP financial statements for inclusion in reports that they file under the Exchange Act. You also state that the Companies currently provide certain GAAP financial information to FNF and FGAL for consolidation in GAAP financial statements that each files in its respective Exchange Act reports. However, you state that the GAAP information that F & G Life and F & G Life of NY prepare does not and will not constitute a GAAP reporting package or partial GAAP financial statements.

You state that F & G Life and F & G Life of NY would have to prepare full entity-level GAAP financial statements only in connection with issuing the Contracts. You also state that as insurance companies subject to state regulation, F & G Life and F & G Life of NY prepare SAP financial statements that are audited by an independent auditor and filed with the Iowa Insurance Division and the Department of Financial Services of the State of New York, respectively, and with the National Association of Insurance Commissioners. You state that the Companies manage their businesses on the basis of the SAP financial statements.

You state that F & G Life and F & G Life of NY are both eligible for the exemption from filing periodic reports required by the Exchange Act provided by rule 12h-7 thereunder and will rely on this exemption and comply with its conditions so long as F & G Life and F & G Life of NY rely on the requested permission.² In this regard, you note that (1) F & G Life and F & G Life of NY are subject to supervision by the Insurance Commissioner of the State of Iowa and the Division of Financial Services of the State of New York, respectively; and (2) F & G Life and F & G Life of NY file annual statements of their financial condition with, and are supervised and their financial condition periodically examined by, their domiciliary state regulators.³

The Contracts

You state that the Contracts will be standalone index-linked annuity contracts or combination annuity contracts that offer variable investment options as well as registered index-linked investment options.

² Rule 12h-7 exempts insurance companies from filing Exchange Act reports with respect to certain specified types of securities that are subject to state insurance regulation and are registered under the Securities Act if certain other conditions are satisfied. 17 CFR 240.12h-7.

³ Rule 12h-7(a) and (c) specify that an issuer qualifying under the rule is a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State (as defined in the Exchange Act); and files an annual statement of its financial condition with, and is supervised and its financial condition examined periodically by, the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of the issuer's domiciliary State.

You state that during the accumulation phase, owners of index-linked annuity contracts are able to select among index-linked investment options each linked to the performance of a specified market index or benchmark. You further assert that these interest crediting options may include a floor, which will establish the maximum negative market performance to which the investors in the Contracts (“Contractowners”) will be exposed, or a buffer, which will establish the maximum amount of negative market performance that the Company will absorb, and a cap, which will establish the maximum positive market performance that may be credited to the Contract at the end of the investment option period. You state that index-linked investment options may include other forms of protection or limits on the maximum positive performance credited to the Contract. You further state that proceeds payable to a Contractowner who withdraws Contract value or surrenders the Contract before the end of the investment option period will be adjusted according to a prescribed formula.

You also state that (1) the Contracts will not constitute an equity interest in the issuing Company and will be subject to regulation under Iowa and New York insurance law, respectively,⁴ (2) the Contracts will not be listed, traded or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network, or any other similar system, network or publication for trading or quoting, and the Companies will take steps reasonably designed to ensure that a trading market for the Contracts does not develop,⁵ and (3) prospectuses for the Contracts will disclose that the issuing Company relies on the relief provided by rule 12h-7.⁶

Discussion

You note that Rule 3-13 provides that the Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements required by Regulation S-X or the filing in substitution thereof of appropriate statements of comparable character. You assert that, for the Form S-1 registration statement of the Contracts, SAP financial statements audited by an independent auditor⁷ are appropriate statements of a comparable character to GAAP financial statements and would be consistent with investor protection.

⁴ Rule 12h-7(b) specifies that the securities that would otherwise trigger Exchange Act reporting obligations must not constitute an equity interest in the issuer, and must either be securities subject to regulation under the insurance laws of the domiciliary State of the issuer or guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction.

⁵ Rule 12h-7(d) requires that those securities must not be listed, traded, or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network, or any other similar system, network, or publication for trading or quoting. Rule 12h-7(e) requires that an issuer take steps reasonably designed to ensure that a trading market for the securities does not develop.

⁶ Rule 12h-7(f) provides that the prospectus for the securities must contain a statement indicating that the issuer is relying on the exemption provided by the rule.

⁷ You state that the independent auditor engaged to audit the SAP financial statements will be registered with and subject to inspection by the Public Company Accounting Oversight Board, and will satisfy the independence standards of Article 2 of Regulation S-X.

In support of this claim, you assert that investors in the Contracts will be most interested in information relevant to assessing the issuing Company's ability to fulfill its contractual obligations.⁸ You assert that SAP financial statements would provide investors in the Contracts with sufficient information to assess the issuing Company's solvency and its ability to satisfy its contractual obligations.⁹

In this regard, you claim that SAP financial statements contain detailed information about each Company's assets and liabilities, as well as its regulatory capital and surplus, which serve as financial cushions for paying contract owner claims. In addition, you claim that SAP financial statements enable state regulators to determine each Company's ability to meet contract owner obligations based on the availability of readily marketable assets when obligations are due.

Based on the facts and representations set forth in your letter as summarized above, as well as the conditions outlined above, and without necessarily agreeing with all of your analysis, your request for permission under Rule 3-13 for F & G Life and F & G Life of NY to file SAP financial statements, audited by an independent auditor, in lieu of GAAP financial statements in registration statements filed for the Contracts on Form S-1, as it relates to the accounting basis of those financial statements only and as described above, is granted.¹⁰

⁸ You note the Commission recognized, in proposing variable annuity registration forms, that contract owners, participants, and annuitants may not want or need disclosure about the financial performance of the insurance company, but instead may be interested only in the company's solvency. *Registration Form for Insurance Company Separate Accounts that Offer Variable Annuity Contracts*, Securities Act Release No. 6502 and Investment Company Act Release No. 13689 (Dec. 22, 1983).

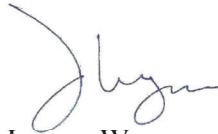
⁹ You also note that, while GAAP financial statements assist investors in understanding companies' going concern value, investors in the Contracts do not need information regarding an issuing Company's going concern value since there is no secondary market in the Contracts.

¹⁰ Our analysis underlying this assurance has been developed in consultation with the staff of the Commission's Office of the Chief Accountant.

This permission is provided for the Contracts described in your letter based on the facts disclosed therein, including that the Contracts seeking to rely on the permission are non-variable annuity contracts classified as market-value adjusted annuities, contingent deferred annuities, and/or indexed annuities. As to any Contract registered or materially amended in the future, this permission is subject to the Commission staff's assessment of the Contract's registration statement for consistency with the facts described in your letter and the intended product types. In this regard, you have stated that the Companies will notify the staff, in a letter accompanying the filing of any new registration statement for a Contract or any post-effective amendment to an existing registration statement that reflects a material change to a Contract, of its intent to rely on the permission granted in this letter.

If you have any questions regarding this letter, please call the Chief Accountant's Office of the Division of Investment Management at (202) 551-6918.

Sincerely,

A handwritten signature in black ink, appearing to read "Jenson Wayne". The signature is fluid and cursive, with the first letter of the first name being a large, stylized "J".

Jenson Wayne

Chief Accountant

Division of Investment Management

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

March 6, 2023

Mr. Jenson Wayne
Chief Accountant
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Fidelity & Guaranty Life Insurance Company and Fidelity & Guaranty Life Insurance Company of New York

Dear Mr. Wayne:

On behalf of Fidelity & Guaranty Life Insurance Company ("F & G Life") and Fidelity & Guaranty Life Insurance Company of New York ("F & G Life of NY") (each the "Company" and together the "Companies"), we respectfully request that, pursuant to Rule 3-13 of Regulation S-X ("Rule 3-13"), the staff of the Division of Investment Management (the "Staff") permit the Companies to file audited financial statements prepared in accordance with statutory accounting principles ("SAP") prescribed or permitted by their domiciliary state regulators, in place of financial statements prepared in accordance with United States generally accepted accounting principles ("GAAP") in registration statements on Form S-1 that the Companies intend to file for certain standalone index-linked annuity contracts or combination annuity contracts that offer both variable investment options as well as registered index-linked options (the "Contracts"), in satisfaction of the financial information required by Form S-1, including the requirements of Items 11(e), 11(g) and 16(b) of the Form.

The Companies are currently developing the Contracts and intend to register them with the Securities and Exchange Commission ("SEC") in the near future. Because the Contracts will be insurance products subject to state regulation, the Companies believe that SAP financial statements are of a comparable character to GAAP financial statements and would provide investors in the Contracts ("Contractowners") with sufficient information to assess the Companies' ability to meet their obligations under the Contracts, and that filing SAP financial statements in place of GAAP financial statements in registration statements on Form S-1 for the Contracts would be consistent with investor protection. Forms N-3, N-4 and N-6 already permit insurers that meet certain criteria to use SAP financial statements on those forms, which relief is intended to reduce the burden on insurance companies that would otherwise prepare GAAP financial statements solely to register variable insurance products. Because of the significant costs and administrative burdens associated with preparing GAAP financial statements, relief permitting use of SAP financial statements in Forms N-3, N-4 and N-6 serves as a precedent for allowing use of SAP financial statements in registration statements on Form S-1 for the Contracts.

The Companies

F & G Life is a stock life insurance company domiciled in the State of Iowa that is subject to supervision by the Iowa Insurance Division. F & G Life of NY, a wholly-owned subsidiary of F & G Life, is a stock life insurance company domiciled in the State of New York that is subject to regulation by the Department of Financial Services of the State of New York. F & G Life and F & G Life of NY sell a variety of fixed annuity and life insurance products, including fixed indexed annuities that track the performance of a specified market index, predominately the S & P 500 Index. The Contracts will be

the first securities that either Company registers with the Securities & Exchange Commission ("SEC") that would require either Company to prepare entity level GAAP financial statements.

F & G Life and F & G Life of NY are indirect wholly-owned subsidiaries of Fidelity National Financial, Inc. ("FNF"), an insurance holding company that is registered under the Securities Exchange Act of 1934 (the "1934 Act") and files periodic reports under the 1934 Act.

There are four intermediate parent companies between F & G Life and FNF that are directly or indirectly wholly owned by FNF. One intermediate parent company, F & G Annuities & Life, Inc. ("FGAL"), is registered under the Securities Exchange Act of 1934 and files periodic reports under the 1934 Act. None of the other intermediate parent companies are registered under the 1934 Act nor do they file periodic reports under the 1934 Act.

FNF and FGAL prepare GAAP financial statements for inclusion in reports that they file under the 1934 Act. The Companies currently provide certain GAAP financial information to FNF and FGAL for consolidation in GAAP financial statements that each files in its respective 1934 Act reports. However, the GAAP information that F & G Life and F & G Life of NY prepare does not and will not constitute a GAAP reporting package or partial GAAP financial statements.

F & G Life and F & G Life of NY would have to prepare full entity-level GAAP financial statements only in connection with issuing the Contracts. As insurance companies subject to state regulation, F & G Life and F & G Life of NY prepare SAP financial statements that are audited by an independent auditor and filed with the Iowa Insurance Division and the Department of Financial Services of the State of New York, respectively, and with the National Association of Insurance Commissioners ("NAIC"). The Companies manage their businesses on the basis of the SAP financial statements.

State regulators periodically examine the SAP financial statements as part of a comprehensive regulatory program that focuses on each Company's solvency, with the goal of ensuring that the Company can fulfill its contractual obligations to its contractowners. The ultimate objective of state solvency regulation is to ensure that an insurance company can pay contractowner liabilities when they become due and that the insurance company maintains capital and surplus at all times in such forms as required by state law to provide a margin of safety. With the objective of solvency regulation and contractowner protection SAP focus on an insurance company's balance sheet and solvency and emphasize the insurance company's liquidity.

F & G Life and F & G Life of NY are both eligible for the exemption from filing periodic reports required by the 1934 Act provided by Rule 12h-7 thereunder and they each will rely on this exemption and comply with the conditions of the rule as long as they rely on the permission requested by this letter. F & G Life and F & G Life of NY are subject to supervision by the Insurance Commissioner of the State of Iowa and the Division of Financial Services of the State of New York, respectively. The Contracts will not constitute an equity interest in the issuing Company and will be subject to regulation under Iowa and New York Insurance law, respectively. The Companies file annual statements of their financial condition with, and are supervised and their financial condition examined periodically by, their domiciliary state regulators. The Contracts will not be listed, traded or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network, or any other similar system, network or publication for trading or quoting. The Companies will take steps reasonably designed to ensure that a trading market for the Contracts does not develop. Prospectuses for the Contracts will disclose that the issuing Company relies on the relief provided by Rule 12h-7.

The Contracts

The Contracts that the Companies propose to register with the SEC on Form S-1 and for which they seek permission will be standalone index-linked annuity contracts or combination annuity contracts that offer variable investment options as well as registered index-linked investment options.

During the accumulation phase, owners of index-linked annuity contracts are able to select among index-linked investment options each linked to the performance of a specified market index or benchmark. These interest crediting options may include a floor, which will establish the maximum negative market performance to which the Contractowner will be exposed, or a buffer, which will establish the maximum amount of negative market performance that the Company will absorb, and a cap, which will establish the maximum positive market performance that may be credited to the Contract at the end of the investment option period. Investment options with floors or buffers that expose the Contractowner to greater risk will have a higher corresponding cap and a greater potential for higher credited interest. Index-linked investment options may include other forms of protection or limits on the maximum positive performance credited to the Contract. Proceeds payable to a Contractowner who withdraws Contract value or surrenders the Contract before the end of the investment option period will be adjusted according to a prescribed formula.

The Companies' Request

Rule 3-13 of Regulation S-X provides that the SEC "may upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of a comparable character." The Companies request permission pursuant to Rule 3-13 of Regulation S-X to file SAP financial statements in place of GAAP financial statements in the Form S-1 registration statements for the Contracts. For the reasons stated herein, the Companies believe that SAP financial statements audited by an independent auditor¹ included in Form S-1 registration statements for the Contracts are appropriate statements of a comparable character to GAAP financial statements and would be consistent with investor protection.

SAP financial statements will provide investors in the Contracts with sufficient information to assess the Companies' ability to meet their contractual obligations.

Forms N-3, N-4 and N-6 used to register variable insurance products under the 1933 Act already permit use of SAP financial statements in place of GAAP financial statements if the insurance company issuing the contract meets certain criteria, including that it would not have to prepare GAAP financial statements except for use in registration statements on such forms. When proposing Forms N-3 and N-4 for variable annuity contracts with instructions permitting the use of SAP financial statements, the SEC recognized that guarantees associated with annuity payments and other benefits provided by the contracts, which are backed by the insurance company's general account, depend on the solvency of the insurance company, and that contractowners, participants and annuitants who invest in the contracts may not want or need disclosure about the financial performance of the insurance company, but instead may be interested only in the company's solvency.²

Similar to investors in variable annuity contracts, investors in the Contracts will be most interested in information relevant to assessing the issuing Company's ability to fulfill its contractual obligations. SAP are designed specifically to provide this type of information to state regulators. SAP financial statements contain detailed information about each Company's assets and liabilities as well as its regulatory capital and surplus, which will serve as financial cushions for paying Contractowner claims.

¹ The Companies' auditor will satisfy the independence standards of Article 2 of Regulation S-X and be registered with and subject to inspection by the Public Company Accounting Oversight Board.

² See Registration Form for Insurance Company Separate Accounts that Offer Variable Annuity Contracts (Proposing Release) Rel. Nos. 33-6502 and IC-13689 (December 22, 1983).

Furthermore, SAP financial statements enable state regulators to determine each Company's ability to meet Contractowner obligations based on the availability of readily marketable assets when obligations are due. In contrast, GAAP financial statements assist investors in understanding a company's going concern value. Due to the absence of any secondary market in the Contracts, Contractowners will not need information regarding the issuing Company's going concern value. Consequently, SAP financial statements would provide Contractowners with sufficient information to assess the issuing Company's solvency and its ability to satisfy its contractual obligations. GAAP financial statements, on the other hand, would not provide additional informative value to Contractowners that would justify the significant costs and administrative burdens of preparing and auditing an additional set of financial statements solely to include in the Form S-1 registration statements for the Contracts.

Conclusion

For the reasons stated above, SAP financial statements are appropriate financial statements of a comparable character to GAAP financial statements and will provide investors in the Contracts with sufficient information to assess each Company's ability to meet its obligations under the Contracts, and filing SAP financial statements in place of GAAP financial statements would be consistent with investor protection.

We respectfully request, on behalf of F & G Life and F & G Life of New York, that the Staff grant permission pursuant to Rule 3-13 of Regulation S-X to permit the Companies to file SAP financial statements audited by an independent auditor in registration statements on Form S-1 for the Contracts. Should you provide this permission, each Company agrees to notify the Staff in a letter, accompanying the filing of any new registration statement for a Contract or any post-effective amendment to an existing registration statement that reflects a material change to a Contract, of its intent to rely on the permission granted in response to this letter.

Thank you for your attention to this matter. Please contact me at 202-383-0158 or Lorna MacLeod at 202-383-0817 if you need additional information or have any questions concerning this request.

Sincerely,

A handwritten signature in black ink that reads "Stephen E. Roth". The signature is written in a cursive style with a large initial 'S' and 'R'.

Stephen E. Roth
Eversheds Sutherland (US) LLP