

may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR-MSTC-95-05 and should be submitted by April 10, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-6697 Filed 3-17-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20954; No. 812-9364]

New York Life Insurance and Annuity Corporation, et al.

March 14, 1995.

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

ACTION: Notice of Application for an Order under the investment Company Act of 1940 ("1940 Act").

APPLICANTS: New York Life Insurance and Annuity Corporation ("NYLIAC"), NYLIAC LifeStages Annuity Separate Account ("Separate Account") and NYLIFE Distributors, Inc. ("Distributors").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the

provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION:

Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Separate Account in connection with the issuance and sale of certain flexible premium variable annuity contracts ("Contracts"), and in connection with certain other NYLIAC variable annuity contracts which are substantially similar in all material respects to the Contracts ("Other Contracts") which are offered in the future through the Separate Account. Applicants also seek to deduct mortality and expense risk charges from the assets of any other similar separate account(s) established by NYLIAC ("Other Accounts"), whether currently existing or hereafter created, in connection with the issuance and sale of the Other Contracts. Applicants also request that the exemptive relief include any other broker-dealer ("Other Broker-Dealers") which may serve in the future as principal underwriter of the contracts or of the Other Contracts.

FILING DATE: The application was filed on December 14, 1994.

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 Commission's Secretary 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 April 4, 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 hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, The Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o New York Life Insurance and Annuity Corporation, 51 Madison Avenue, New York 10010.

FOR FURTHER INFORMATION CONTACT:

Yvonne M. Hunold, Assistant Special Counsel or Wendy Friedlander, Deputy Chief at (202) 942-0670, Office of Insurance Products (Division of Investment Management)..

SUPPLEMENTARY INFORMATION: Following is a summary of the application; complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. NYLIAC, a stock life insurance company, is wholly-owned by New York Life Insurance Company ("New York Life"), a mutual life insurance company. NYLIAC is principally engaged in offering life insurance and annuities and is admitted to do business in all 50 states, the District of Columbia, Puerto Rico and Canada.

2. The Separate Account was established by NYLIAC to fund the Contracts. The Separate Account and the Other Accounts may be used to fund Other Contracts. The Separate Account has filed a notice of registration under the 1940 Act to register as a unit investment trust, and a registration statement under the 1940 Act and the Securities Act of 1933 ("1933 Act") to register the Contracts as securities. Other Accounts each will file a notice of registration under the 1940 Act to register as unit investment trusts, and a registration statement under the 1940 Act and the 1933 Act to register any Other Contract as securities.¹

The Separate Account currently has seven investment divisions, each investing exclusively in one of seven corresponding portfolios of New York Life MFA Series Fund, Inc. ("Fund"), a diversified, open-end management investment company registered under the 1940 Act. Additional investment divisions may be established in the future to invest in other Fund portfolios or in other investments. Portfolio shares also may be offered to Other Accounts.

3. Distributors, currently the principal underwriter of the Contracts is an indirect wholly-owned subsidiary of New York Life. Broker-Dealer and is a member of the National Association of Securities Dealers ("NASD"). Distributors may enter into agreements for the sale of the Contracts or the Other Contracts with Other Broker-Dealers which will be registered under the 1934 Act,² and which are or will be members of the NASD.

The Contracts are to be used either in connection with retirement plans qualities under Sections 401(a), 403(a) 403(b), 403(b), 408 OR 457 of the Internal Revenue Code or by any other purchaser for whom the Contracts may provide a suitable investment.

5. The Contracts provide for the payment of initial premium payments and allow for additional premium payments at any time prior to Annuity

¹ Applicants undertake to amend the application during the notice period to make this representation.

² Applicants undertake to amend the application during the notice period to make this representation.

Commencement Date for the life of the Annuitant. Contract owners may direct the allocation of premium payments, as well as Accumulation Value, among the investment divisions and to the Fixed Account, which is part of NYLIAC's General Account. Accumulation value is determined on a variable basis by the investment experience of the investment divisions selected for the allocation of premium payments, other than the amount allocated to the Fixed Account.

6. The Contracts also provide for the payment of a minimum death benefit equal to the greatest of: (a) Accumulation Value, less any outstanding loan balance under the Contract, (b) the sum of all premium payments made less any outstanding loan balance, partial withdrawals, CDSL deductions and any rider premiums, or (c) the "reset value" plus any additional premium payments, other than rider premiums, made since the most recent "reset date," less any outstanding loan balance, withdrawals made since the most recent "reset date," and any CDSL deductions applicable to such withdrawals.³

7. Various fees and charges are deducted under the Contracts. An annual Contract fee of the lesser of \$30 or 2% of the Accumulation Value at the end of the Contract Year will be deducted on each Contract Anniversary during the Accumulation Period, or upon surrender of the Contract if on that date the Accumulation Value is less than \$20,000. A daily charge equal, on an annual basis, of up to .15% of the net asset value of the appropriate separate account will be deducted to cover administration expenses of the Contract and of the Other Contracts. These fees are guaranteed for the life of such Contracts or Other Contracts and will not exceed the cost of services to be provided over the life of such Contracts, in accordance with the provisions of Rule 26a-1 under the 1940 Act.

8. A charge for premium taxes imposed by state law may be deducted under the Contracts, either when a surrender or cancellation occurs, or at the Annuity Commencement Date or the Retirement Date, as applicable.

³The "reset value," is equal to the Accumulation Value, as recalculated on each "reset date" (every 3 years from the date of initial premium payments until age 85). If the new reset value calculated on the most recent reset date is higher than the previous reset value, the new reset value will be retained for purposes of determining the available death benefit. If it is lower, the old reset value will be retained. The formula guarantees that the amount paid will at least equal the sum of all premium payments (less any outstanding loan balance, partial withdrawals, CDSL deductions and rider premiums), independent of the investment experience of the Separate Account.

Currently, these taxes range up to 3.5%. The Separate Account and the investment divisions may bear charges for federal income taxes, should such taxes be incurred by NYLIAC in connection with the operation of the Separate Account.

9. No charge currently is deducted for the first twelve transfers during any Contract Year or for transfers prior to 30 days before the Annuity Commencement Date. NYLIAC reserves the right to charge a \$30 fee for each transfer in excess of twelve per Contract Year.

10. No sales charge currently is deducted from premium payments under the Contracts, nor will be deducted under Other Contracts. Surrenders and partial withdrawals, however, are subject to a maximum contingent deferred sales load ("CDSL") of 7% during the first three years, declining by 1% per year thereafter until reaching 0% in the sixth year. Other Contracts will be subject to a maximum 7% CDSL. The total CDSL will not exceed 8.5% of the premium payments under the Contract or Other Contracts. Applicants are relying on Rule 6c-8 under the 1940 Act to deduct the CDSL.

11. A daily charge equal to an effective annual rate of 1.25% of the net asset value of each investment division will be imposed to compensate NYLIAC for bearing certain mortality and expense risks in connection with the Contracts and Other Contracts. Of this amount, 0.75% is allocable to mortality risks and 0.50% is allocable to expense risks. This charge may be a source of profit for NYLIAC which will be added to its surplus and may be used for, among other things, the payment of distribution expenses.

12. The mortality risk borne by NYLIAC arises from its obligation to make annuity payments (determined in accordance with the Annuity Tables and other provisions contained in the Contract), where a life annuity is selected, regardless of how long an Annuitant may live. The mortality risk under the Contract is the risk that, upon selection of an annuity payment option which has a life contingency, Annuitants will live longer than NYLIAC's actuarial projections indicate, resulting in higher than expected income payments. NYLIAC also is assuming mortality risk as a result of its promise to pay a minimum death benefit under the Contracts.

13. The expense risk borne by NYLIAC under the Contract is the risk that the charges for administrative expenses, which are guaranteed for the life of the Contract, may be insufficient

to cover the actual costs of issuing and administering the Contracts.

Applicants' Legal Analysis and Conditions

1. Applicants request an order under Section 6(c) granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction from the assets of the Separate Account or Other Accounts of a charge for mortality and expense risks under the Contracts or Other Contracts. Applicants also request that the exemptive relief extend to Other Broker-Dealers which may serve in the future as principal underwriters of the Contracts or Other Contracts.

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the 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.

3. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 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.

4. Applicants submit that their request for an order is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for NYLIAC to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring NYLIAC repeatedly to seek exemptive relief with respect to the same issues addressed in this Application.

5. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity contracts. This representation is based upon Applicants' analysis of publicly available information about similar industry products, 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 this review, Applicants represent that the mortality and expense risk charges under the Contracts are within the range of industry practice for comparable contracts. Applicants state that NYLIAC will maintain at its corporate headquarters⁴ and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

Similarly, prior to making available any Other Contracts, Applicants will determine that the mortality and expense risk charges under any such Other Contracts will be within the range of industry practice for comparable contracts. Applicants state that NYLIAC will maintain at corporate headquarters⁵ and make available to the Commission, upon request, a memorandum outlining the methodology underlying such conclusion.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. NYLIAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Contract Owners. NYLIAC will keep at its corporate headquarters⁶ and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

7. Similarly, Applicants recognize that, if a profit is realized from the mortality and expense risk charge under the Other Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSL. Prior to issuing Other Contracts, NYLIAC will determine that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the relevant separate account and the Other Contract Owners. The basis for that conclusion will be set forth in a memorandum which will be maintained by NYLIAC at

⁴ Applicants undertake to amend the application during the notice period to make this representation.

⁵ Applicants undertake to amend the application during the notice period to make this representation.

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its corporate headquarters⁷ and will be made available to the Commission, upon request.

8. Applicants represent that the Separate Account, and any Other Accounts, will invest only in underlying funds that 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 1940 Act to finance distribution expenses.

Applicants' Conditions

Applicants agree that if the requested order is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above. In addition, Applicants undertake to rely on the exemptive relief requested herein with respect to Other Contracts only if such Other Contracts are substantially similar in all material respects to the Contracts.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts, or under Other Contracts, offered by the Separate Account or by Other Accounts, meets the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies 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. 95-6749 Filed 3-17-95; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying

⁷ Applicants undertake to amend the application during the notice period to make this representation.

the public that the agency has made such a submission.

DATES: Comments should be submitted on or before April 19, 1995. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: Financing Eligibility Statement
Form No.: SBA Form 1941A, B, and C

Frequency: On Occasion

Description of Respondents: SBA businesses seeking financing from Specialized Small Business Investment Companies (SSBIC)

Annual Responses: 1,000

Annual Burden: 2,000

Dated: March 10, 1995.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 95-6712 Filed 3-17-95; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

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