

longer capture and maintain the tax identification number (that might also be an individual's social security number). Information collected from the generation of the Information Based Indicia receives the same security as that collected by the metered postage process. Systems security has not been diminished. Moreover, the Postal Service has given careful attention to ensure secure transmission of information it receives electronically from the authorized product service providers. A customer applying online for a postage evidencing system must provide certain information to the service provider that is needed to process the request for a license. The service provider then sends the information to the Postal Service in a "secure session" established by Secure Sockets Layer (SSL) or equivalent technology. These technologies encrypt or scramble the transmitted information so it is virtually impossible for anyone other than the Postal Service and its authorized product service providers to read it.

In addition to the protections imposed by the Privacy Act, the Postal Reorganization Act imposes restrictions on the disclosure of information of the type kept within system USPS 140.020. The Act does not permit the Postal Service to disclose lists of postal customers or other persons. It also does not require the Postal Service to disclose information that could cause competitive harm. The Postal Service has traditionally considered the mailing habits of a particular customer exempt from disclosure under the Postal Reorganization Act.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the system changes has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS Privacy Act system 140.020 was last published in its entirety in the **Federal Register** on October 26, 1989 (54 FR 43701) and was amended on May 12, 1997 (62 FR 25980-25981). It is proposed that the system description be amended as follows:

USPS 140.020

SYSTEM NAME:

[CHANGE TO READ:]

Postage—Postage Evidencing System Records, 140.020.

SYSTEM LOCATION:

[CHANGE TO READ:]

Retail, Postal Service Headquarters; District offices; the Information Systems

Support Center, Eagan, MN; and authorized postage evidencing system service providers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[CHANGE TO READ:]

Postage Evidencing System users.

CATEGORIES OF RECORDS IN THE SYSTEM:

[CHANGE TO READ:]

Customer name and address, change of address information, corporate business customer information (CBCIS) number, business profile information, estimated annual postage and annual percentage of mail by type, type of usage (customer, postal, or government), post office where mail is entered, license number, date of issuance, ascending and descending register values, device identification number, device model number, certificate serial number, amount and date of postage purchases, amount of unused postage refunded, contact telephone number, date, destination delivery point (ZIP+4) and rate category of each indicium created, and transaction documents.

* * * * *

PURPOSE(S):

[CHANGE TO READ:]

To enable responsible administration of postage evidencing system activities and, secondarily, to provide information about postal products and services to customers who use postage evidencing systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

2. [CHANGE TO READ:]

Records or information from this system may be disclosed to an authorized postage evidencing system service provider or its affiliates, dealers, subsidiaries, or franchises for administering the postage evidencing system program. Release will be limited to relevant information about that service provider's customers only.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

[CHANGE TO READ:]

By customer name and by numeric file of postage evidencing systems identification number or customer license number.

SAFEGUARDS:

[CHANGE TO READ:]

Paper records and computer storage media are maintained in closed file

cabinets in secured facilities; automated records are protected by computer password. Information is obtained from users over the Internet and transmitted electronically to the Postal Service by authorized postage evidencing system service providers in a "secure session" established by the Secure Sockets Layer (SSL) or equivalent technology.

RETENTION AND DISPOSAL:

[CHANGE TO READ:]

Records are maintained for a period of up to four years after final entry or the duration of the license and then destroyed by shredding.

* * * * *

NOTIFICATION PROCEDURE:

[CHANGE TO READ:]

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries in writing to: Manager, Metering Technology Management, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260-2444. When making this request, an individual must supply the license number and his or her name as it appears on the postage evidencing system license.

* * * * *

RECORD SOURCE CATEGORIES:

[CHANGE TO READ:]

License applications, licenses, postal officials administering postage evidencing systems, postage evidencing system activity reports, refund requests for unused postage, postage evidencing system resetting reports, log file entries, and authorized service providers of postage evidencing systems.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99-34050 Filed 12-30-99; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24220; File No. 812-11818]

IDS Life Insurance Company, et al.

December 23, 1999.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to permit the recapture of credits applied to

contributions made under certain deferred variable annuity contracts.

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit the issuance and, under specified circumstances, the subsequent recapture of certain credits applied to contributions made under: (i) certain deferred variable annuity contracts that IDS Life or American Enterprise will issue through the Accounts ("Contracts"), and (ii) contracts that the Insurance Companies may in the future issue through the Accounts or any Future Account that are substantially similar in all material respects to the Contracts ("Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with the Insurance Companies, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts or any Future Contracts offered through the Accounts or any Future Account (collectively "Affiliated Broker-Dealers").

APPLICANTS: IDS Life Insurance Company ("IDS Life"), American Centurion Life Assurance Company ("American Centurion Life"), IDS Life Insurance Company of New York ("IDS Life NY") American Enterprise Life Insurance Company ("American Enterprise Life") (collectively, the "Insurance Companies"), American Express Financial Advisors, Inc. ("AEFA"), IDS Life Variable Account 10 ("IDS Account 10"), American Enterprise Variable Annuity Account ("American Enterprise Account," and together with IDS Account 10, the "Account") (collectively, "Applicants").

FILING DATE: The application was filed on October 15, 1999, and amended and restated on December 7, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 17, 2000, and should be accompanied by proof of service on the 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 who wish to be notified of a

hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, c/o IDS Life Insurance Company, IDS Tower 10, T27/52, Minneapolis, Minnesota 55440-0010, Attn: Mary Ellyn Minenko.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Susan M. Olsen, Branch 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 SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549-0102 (tel. (202) 942-8090).

Applicants Representations

1. IDS Life is a stock life insurance company organized under the laws of the State of Minnesota. IDS Life is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the NASD. IDS Life is a wholly-owned subsidiary of American Express Financial Corporation ("AEFC"). IDS Account 10 was established on August 23, 1994, pursuant to authority granted under a resolution of IDS Life's Board of Directors. IDS Life is the issuer and principal underwriter of the Contracts funded through IDS Account 10 (the "IDS Account 10 Contracts"). IDS Life may in the future issue Future Contracts through IDS Account 10 or through Future Accounts, for which IDS Life also may serve as principal underwriter.

2. American Enterprise Life is a stock life insurance company organized under the laws of the State of Indiana. American Enterprise Life is a wholly-owned subsidiary of IDS Life. American Enterprise Account was established on July 15, 1987, pursuant to authority granted under a resolution of American Enterprise Life's Board of Directors. American Enterprise Life serves as the issuer for the Contracts funded through American Enterprise Account (the "American Enterprise Account Contract"). American Enterprise Life may in the future issue Future Contracts through American Enterprise Account or through Future Accounts.

3. IDS Life NY is a stock life insurance company organized under the laws of the State of New York. IDS Life NY is a wholly-owned subsidiary of IDS Life. IDS Life NY may in the future issue

Future Contracts through Future Accounts.

4. American Centurion Life is a stock insurance company organized under the laws of the State of New York. American Centurion Life is a wholly-owned subsidiary of IDS Life. American Centurion Life may in the future issue Future Contracts through Future Accounts.

5. AEFA serves as the principal underwriter for the American Enterprise Account Contracts and as distributor of the IDS Account 10 Contracts. AEFA is registered with the Commission as a broker-dealer under the 1934 Act and is a member of the NASD. The IDS Account 10 Contracts will be offered through registered representatives of AEFA and its affiliates who are registered broker-dealers under the 1934 Act and NASD members. The American Enterprise Account Contracts will be distributed by broker-dealers who are registered under the 1934 Act and NASD members and who have entered into distribution agreements with AEFA and American Enterprise Life and through AEFA. AEFA, or any successor or affiliated entity, may act as principal underwriter for any Future Account issued by American Enterprise Life or as distributor for any Future Contracts issued by IDS Life in the future.

6. IDS Account 10 is a segregated asset account of IDS Life, and American Enterprise Account is a segregated asset account of American Enterprise Life. Each Account and its component subaccounts are registered together with the Commission as a single unit investment trust under the 1940 Act. The respective Account will fund the variable benefits available under the Contracts. The offering of the Contracts is registered under the Securities Act of 1933 (the "1933 Act"). IDS Life and IDS Account 10 filed a Form N-4 Registration Statement under the 1933 Act relating to the Contracts on September 20, 1999 (Rule 497 filing). American Enterprise Life and American Enterprise Account filed a Form N-4 Registration Statement on August 19, 1999 under the 1933 Act relating to the Contracts.

7. That portion of the respective assets of the Accounts that is equal to the reserves and other Contract liabilities with respect to the Accounts is not chargeable with liabilities arising out of any other business of IDS Life of American Enterprise Life, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to the Accounts are, in accordance with the respective Accounts' Contracts, credited to or charged against the Accounts, without

regard to other income, gains or losses of IDS Life or American Enterprise Life, as the case may be.

8. An IDS Account 10 Contract may be issued as a non-qualified annuity ("NQ") for after tax contributions only, or as a qualified annuity under the following retirement plans: (i) Individual Retirement Annuities ("IRAs"), (ii) Simplified Employee Pension ("SEP") plans, (iii) Section 401(k) plans, (iv) custodial and trustee pension and profit sharing plans, or (v) Tax-Sheltered Annuities ("TSAs"). An IDS Account 10 Contract may be purchased: (i) with a minimum initial payment of \$1,000 for qualified plans or \$2,000 for nonqualified plans, or (ii) in minimum installments or \$50 per month or \$23.08 biweekly under a scheduled plan. Unless payments are made by installments under a scheduled payment plan, an owner may make additional payments, subsequent to the initial payment (initial payments and subsequent additional payments are collectively referred to herein as "Purchase Payments"). Maximum limitations on Purchase Payments are imposed for the first year and subsequent years, depending on the age of the owner or annuitant.

9. Owners of IDS Account 10 Contracts may allocate their Purchase Payments among a number of subaccounts of IDS Account 10. The subaccounts are referred to as "Investment Funds." Each Investment Fund will invest in shares of a corresponding portfolio ("Portfolio") of American Express Variable Portfolio Funds ("AXP Funds"), AIM Variable Insurance Funds, Inc. ("AIM Funds"), American Century Variable Portfolios, Inc. ("American Century VP"), Fidelity Variable Insurance Products Funds (Service Class) ("Fidelity VIP Funds"), Franklin Templeton Variable Insurance Products Trust (Class 2) ("Franklin Templeton VIP Trust"), Goldman Sachs Variable Insurance Trust ("Goldman Sachs VIT"), Lazard Retirement Series, Inc. ("Lazard RSI"), Putnam Variable Trust ("Putnam VT"), Royce Capital Fund, Third Avenue Variable Series Trust, Wagner Advisors Trust, and Warburg Pincus Trust. IDS Life, at a later date, may decide to create additional Investment Fund(s) to invest in any additional Portfolio(s) as may now or in the future be available. IDS Life, from time to time, also may combine or eliminate Investment Funds.

10. The IDS Account 10 Contract provides for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among Investment Funds, dollar cost averaging, and other features. The IDS

Account 10 Contract contains the following charges: (i) a contingent deferred sales charge ("CDSC") as a percentage of Purchase Payment surrendered, depending on the surrender charge schedule the owner selected at the time of application. With respect to a 7-year surrender charge schedule, the CDSC is 7% in years 1-3, 6% in year 4, 5% in year 5, 4% in year 6, 2% in year 7, and 0% thereafter. With respect to a 10-year surrender charge schedule, the CDSC is 8% in years 1-3, 7% in years 4-5, 6% in year 6, 5% in year 7, 4% in year 8, 3% in year 9, 2% in year 10, and 0% thereafter; (ii) a \$30 annual administrative expense charge; (iii) a mortality and expense risk fee of 0.75% for qualified annuities and 0.95% for NQs; and (iv) any applicable state or local premium taxes up to 3.5%, depending on the owner's state of residence or the state in which the contract was sold. In addition, assets invested in Investment Funds are charged with the annual operating expenses of those Funds.

11. Each time IDS receives a Purchase Payment from an owner, it will allocate to the owner's IDS Account 10 a credit ("Credit") equal to: (i) 1% of each Purchase Payment received if the owner elected the ten-year surrender charge schedule for the IDS Account 10 Contract, or if the owner elected the seven-year surrender charge schedule and the initial Purchase Payment is at least \$100,000; and (ii) 2% of each Purchase Payment received if the owner elected the ten-year surrender charge schedule and the initial Purchase Payment is at least \$100,000. IDS Life will allocate Credits according to the allocation instructions in effect for the Purchase Payments.

12. Applicants represent that the percentage amount of the Credit under the IDS Account 10 and the American Enterprise Account Contracts described in the application could change for enhanced versions of the Contracts issued in the future, but will not exceed 8%. In addition, the percentage amount of the Credit under Future Contracts may differ from the Credit under the Contracts, but will not exceed 8%.

13. IDS Life will fund Credits from its general account assets. IDS Life will recapture certain Credits from an owner under the following circumstances: (i) any Credit applied if the owner returns the IDS Account 10 Contract for a refund during the 10-day free look period; (ii) Credits applied within twelve months preceding the date of death that results in a lump sum death benefit under the IDS Account 10 Contract (as described herein); or (iii)

Credits applied within twelve months preceding a request for a surrender due to an event where no CDSC is incurred ("Contingent Event"). Applicants represent that the amount the owner receives in each of these circumstances will always at least equal and normally will exceed the surrender value (Contract value minus any applicable charges) of the IDS Account 10 Contract.

14. The free look period is the 10-day period during which an owner may return a Contract after it has been delivered and receive a full refund of the Contract value, less any Credits up to the maximum surrender charge under the Contract. No other charges will apply to the refund, but the owner bears the investment risk from the time of purchase until he or she returns the contract. The refund amount may be more or less than the Purchase Payment the owner made, unless the law requires that the full amount of the Purchase Payment be refunded.

15. A Contingent Event is an owner's or annuitant's confinement to a nursing home, disability, terminal illness or unemployment. Under the IDS Account 10 Contract, the only Contingent Event currently is for nursing home confinement, but the others are expected to be added later by endorsements.

16. The IDS Account 10 Contract death benefit provision states that, upon the earlier of the owner's or annuitant's death before annuity payouts begin and while the Contract is in force, IDS Life will pay the following death benefits less any Credits applied to the Contract in the preceding twelve months (to the extent a death benefit includes contract value credits): (i) if both the owner and annuitant are age 80 or younger on the date of death, the beneficiary receives the greatest of (a) the Contract value; (b) Purchase Payments, minus any adjusted partial surrenders; or (c) the Contract value of the most recent sixth contract anniversary, plus any purchase payments paid, and minus any adjusted partial surrenders since that anniversary; or (ii) if either the owner or annuitant are age 81 or older on the date of death, the beneficiary receives the greater of (a) Contract value; or (b) Purchase Payments, minus any adjusted partial surrenders.

17. An American Enterprise Account Contract may be issued as an NQ or as a qualified annuity under the following retirement plans: (i) IRAs, including Roth IRAs, or (ii) SEP plans. There are two different Contracts supported by American Enterprise Account: Wells Fargo Advantage Credit Variable Annuity ("Advantage Contract") and Signature Plus Variable Annuity

("Signature Contract"). An Advantage Contract sold through AEFA currently may be issued only as an NQ. The American Enterprise Account Contract differs from the IDS Account 10 contract in that the American Enterprise Account Contract offers: (i) a Guaranteed Period Account feature that involves a market value adjustment ("MVA"); (ii) optional death benefit riders; and (iii) guaranteed minimum income riders.

18. Purchase Payments allocated to Guaranteed Period Accounts are held in a "nonunitized" separate account established under Indiana law. The assets in the Guaranteed Period Account will not be charged with the liabilities of any other separate account or of American Enterprise Life's general business. Each Guarantee Period will provide a guarantee of the Purchase Payment allocated thereto and an interest rate that is declared at the time of the allocation. An upward or downward adjustment, or MVA, will be applied to a Guaranteed Period Account upon a withdrawal or transfer prior to the end of the Guarantee Period.

19. An Advantage Contract may be purchased: (i) with a minimum initial payment of \$2,000 (the minimum initial payment for an Advantage Contract sold through AEFA is \$100,000); or (ii) \$50 if enrolled in the Systematic Investment Program ("SIP"). A Signature Contract may be purchased: (i) with a minimum initial payment of \$25,000; or (ii) \$50 if enrolled in the SIP. A Guarantee Period Account requires a minimum initial payment of \$1,000. Subsequent additional Purchase Payments require a minimum of \$50 for SIP payments and \$100 for non-SIP payments. The maximum total Purchase Payments under an American Enterprise Account Contract is \$1,000,000 (without prior approval). The owner of an American Enterprise Account Contract also may select a withdrawal charge period of six or eight years at the time of application. Only the eight-year withdrawal charge period is available under an Advantage Contract sold through AEFA.

20. Owners of the Advantage Contract may allocate the Purchase Payments among the Investment Funds under the Contract. Each Investment Fund will invest in shares of portfolios of AXP Funds, AIM Funds, Franklin Templeton VIP Trust, Goldman Sachs VIT, Putnam VT, Dreyfus Socially Responsible Growth Fund, Inc., MFS Variable Insurance Trust ("MFS VIT"), and Wells Fargo Variable Trust Funds ("Wells Fargo VT").

21. Owners of the Signature Contract may allocate their Purchase Payments among the Investment Funds under the Contract. Each Investment Fund will

invest in shares of Portfolios of AXP Funds, AJM Funds, Alliance Variable Products Series Funds, Baron Capital Funds, Fidelity VIP Funds, Franklin Templeton VIP Trust, Goldman Sachs VIT, J.P. Morgan Series Trust 11, Lazard RSI, MFS VIT, Royce Capital Fund, Wanger Advisors Trust, Warburg Pincus Trust, and Wells Fargo VT.

22. An American Enterprise Account Contract provides for various withdrawal options, annuity benefits and payout annuity options, as well as transfer privileges among Investment Funds, dollar cost averaging, asset rebalancing, and other features. The Advantage Contracts contain the following charges: (i) \$30 annual administrative charge (waived at \$50,000); (ii) a 0.15% variable account administrative charge; (iii) a mortality and expense risk fee of: 1.35% for 6-year withdrawal schedule, 1.10% for 8-year withdrawal schedule, and an additional charge of 0.20% if the Enhanced Death Benefit Rider is selected; (iv) an annual fee based on a modified Guaranteed Income Benefit Base (currently at 0.30%) if the Guaranteed Minimum Income Benefit Rider is selected; (v) a CDSC as a percentage of Purchase Payment withdrawn, depending on the withdrawal charge schedule selected (the CDSC is as follows for: (a) a 6-year surrender charge schedule: 8% in years 1-3, 6% in year 4, 4% in year 5, 2% in year 6, and 0% thereafter; and (b) an 8-year surrender charge schedule: 8% in years 1-5, 6% in year 6, 4% in year 7, 2% in year 8 and 0% thereafter); (vi) any applicable state or local premium taxes; and (vii) the annual operating expenses of the Investment Funds.

23. The Signature Contracts contain the following charges: (i) \$40 annual administrative charge (waived at \$100,000); (ii) a 0.15% variable account administrative charge; (iii) a mortality and expense risk fee of: 1.45% for 9-year withdrawal schedule (including either the Maximum Anniversary Death Benefit Rider or the 5% Accumulation Death Benefit Rider), 1.35% for 9-year withdrawal schedule without either of the death benefit riders; (iv) an annual fee based on a modified Guaranteed Income Benefit Base (currently at 0.30%) if the Guaranteed Minimum Income Benefit Rider (5% Accumulation Benefit Base) is selected; (v) a CDSC as a percentage of Purchase Payment withdrawn of 8% in years 1-4, 7% in year 5, 6% in years 6 and 7, 4% in year 8, 2% in year 9, and 0% thereafter, (vi) any Applicable state or local premium taxes; and (vii) the annual operating expenses of the Investment Funds.

24. Each time American Enterprise Life receives a Purchase Payment from an owner, it will allocate the owner's American Enterprise Account a Credit as a percentage of the net current payment (current payment less the amount of partial withdrawals that exceed all prior Purchase Payments) as follows: (i) with respect to an Advantage Contract: 1% for less than \$10,000, 2% for \$10,000 to less than 1 million, 3% for \$1 million to less than 5 million, and 4% for \$5 million and over; and (ii) with respect to a Signature Contract: 3% for \$25,000 to less than \$100,000, 4% for \$100,000 to less than \$1 million, and 5% for \$1 million and over. American Enterprise Life will allocate Credits according to the allocation instructions in effect for the Purchase Payments.

25. American Enterprise Life will fund Credits from its general account assets. American Enterprise Life will recapture certain Credits from an owner under the following circumstances: (i) any Credit applied if the owner returns the American Enterprise Account Contract for a refund during a 10-day free look period; (ii) Credits applied within twelve months preceding the date of death that results in a death benefit (including death benefits under the Enhanced Death Benefit Rider, Maximum Anniversary Value Death Benefit Rider, and 5% Accumulation Death Benefit Rider) under the American Enterprise Account Contract; or (iii) Credits applied within twelve months preceding a request for a withdrawal due to any Contingent Event. The amount the owner receives under these circumstances will always equal or exceed the surrender value of the Contract.

26. The Advantage Contract death benefit provision states that, if the owner or annuitant dies before annuity payouts begin while the Contract is in force, American Enterprise Life will pay the beneficiary the greatest of the following less any Credits added to the Contract in the last 12 months: (i) the Contract value; (ii) the total Purchase Payments paid, plus Credits, and minus any adjusted partial withdrawals; or (iii) the maximum anniversary value immediately preceding the date of the death, plus the dollar amount of any Purchase Payments since that anniversary, plus Credits, and minus any adjusted partial withdrawals since that anniversary.

27. The Advantage Contract offers an Enhanced Death Benefit Rider, which requires the owner or the annuitant to be age 79 or younger on the Contract date. The Enhanced Death Benefit Rider provides that if the owner or the annuitant dies before annuity payouts

begin while the Contract is in force, American Enterprise Life will pay the beneficiary the greatest of the following specified amounts, less any Credits added in the last twelve months: (i) the contract value; (ii) the total Purchase Payments paid, plus Credits, and minus any adjusted partial withdrawals; (iii) the "maximum anniversary value" immediately preceding the date of death, plus any Purchase Payments since that anniversary, plus Credits, and minus any adjusted partial withdrawals since that anniversary; or (iv) the Variable Account 5% Floor (the sum of the value in the fixed accounts plus the accumulated initial purchase payments allocated to the subaccounts plus 5%).

28. The Signature Contract death benefit provision states that, if the owner or annuitant dies before annuity payouts begin while the contract is in force, American Enterprise Life will pay the beneficiary the greatest of the following less any Credits added to the contract in the last 12 months: (i) the Contract value; or (ii) the total Purchase Payments paid, plus Credits, and minus any adjusted partial withdrawals.

29. The Signature Contract has two other death benefit options offered as riders, which require the owner or the annuitant to be age 79 or younger on the Contract date. The Maximum Anniversary Value Death Benefit Rider provides that if the owner or the annuitant dies before annuity payouts begin while the Contract is in force, American Enterprise Life will pay the beneficiary the greatest of the following specified amounts, less any Credits added in the last twelve months: (i) the Contract value; (ii) the total Purchase Payments paid, plus Credits, and minus any adjusted partial withdrawals; or (iii) the maximum anniversary value immediately preceding the date of death, plus any Purchase Payments since that anniversary, plus Credits, and minus any adjusted partial withdrawals since that anniversary.

30. The Signature Contract also offers the 5% Accumulation Death Benefit Rider option, which provides that if the owner or annuitant dies before annuity payouts begin while the Contract is in force, American Enterprise Life will pay the beneficiary the greatest of the following specified amounts, less any Credits added in the last twelve months: (i) the Contract value; (ii) the total Purchase Payments paid, plus Credits, and minus any adjusted partial withdrawals; or (iii) the Variable Account 5% Floor.

31. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent

necessary to permit the Insurance Companies to issue Contracts and Future Contracts that provide for Credits upon the receipt of Purchase Payments, and to recapture certain Credits in the following instances: (i) any Credit applied when an owner returns a Contract to the Insurance Companies for a refund during the free look period, and (ii) Credits applied within twelve months preceding the date of death that results in a death benefit as described herein (including death benefits under the Enhanced Death Benefit Rider and Maximum Anniversary Value Death Benefit Rider under an American Enterprise Account contract); and (iii) Credits applied within twelve months preceding a request for a surrender or withdrawal charge waiver due to any Contingent Event.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated 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. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions summarized above with respect to the Contracts and any Future Contracts funded by the Accounts or Future Accounts, that are issued by the Insurance Companies and underwritten or distributed by IDS Life, AEFAs, or Affiliated Broker-Dealers. Applicants undertake that Future Contracts funded by the Separate Accounts or any Future Account will be similar in all material respects to the Contracts. Applicants believe that the requested exemptions are 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. Applicants represent that it is not administratively feasible to track the Credit amount in any of the Accounts after the Credit is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the respective Accounts, including the Credit amount, during the free look period and the three year period prior to annuitization. As a result, during such periods, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that

would be charged if the owner's annuity account value did not include the Credit.

3. Subsection (i) of Section 27 of the 1940 Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the recapture of the Credit amount in the circumstances set forth above would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the Credit amount allocated to his or her annuity account value upon receipt of an initial Purchase Payment is not vested until the applicable free look period has expired without return of the Contract. Similarly, Applicants state that an owner's interest in the Credit amounts allocated to his or her annuity account within twelve months preceding a Contingent Event also is not vested. Until the right to recapture has expired and any Credit amount is vested, Applicants submit that the Insurance Companies retain the right and interest in the Credit amount, although not in the earnings attributable to that amount. Thus, Applicants argue that when the Insurance Companies recapture any Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Account's assets because his or her interest in the Credit amount has not vested.

5. In addition, Applicants state that permitting an owner to retain a Credit amount under a Contract upon the exercise of the free look privilege would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it and returning it for a quick profit.

6. Furthermore, Applicants state that the recapture of Credit amounts within twelve months preceding a Contingent Event is designed to provide the Insurance Companies with a measure of

protection against anti-selection. Applicants state that the risk here is that, rather than spreading Purchase Payments over a number of years, an owner might make very large Purchase Payments shortly before the occurrence of a Contingent Event, thereby leaving the Insurance Companies little time to recover the cost of the Credits. As noted earlier, the amounts recaptured equal the Credits provided by the Insurance Companies from their general account assets, and any gain would remain a part of the owner's Contract value. In addition, the amount the owner will receive in any of the circumstances where Credits are recaptured will always equal or exceed the surrender value of the Contract.

7. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put 101% to 105% of their Purchase Payments to work for them in the selected Investment Funds. In addition, the owner will retain any earnings attributable to the Credit, as well as the principal Credit amount once vested after twelve months if the Contingent Events set forth in the application are satisfied.

8. Further, Applicants submit that the recapture of any Credit only applies in relation to the risk of anti-selection against the Insurance Companies. In the context of the Contingent Events described in the application, anti-selection can generally be described as a risk that Contract owners obtain an undue advantage based on elements of fairness to the Insurance Companies and the actuarial and other factors they take into account in designing the Contracts. The Insurance Companies provide the Credits from their general account on a guaranteed basis. Thus, the Insurance Companies undertake a financial obligation that contemplates the retention of the Contracts by their owners over an extended period, consistent with the long-term nature of retirement planning. The Insurance Companies generally expect to recover their costs, including Credits, over an anticipated duration while a Contract is in force. The right to recapture Credits applied to Purchase Payments made within twelve months preceding the applicable contingency protects the Insurance Companies against the risk that a Contract owner will make additional Purchase Payments to or purchase a contract with the knowledge that the contingency that triggers payment of a benefit is likely or about to occur. With respect to refunds paid upon the return of Contracts within the free look period, the amount payable by the Insurance Companies must be

reduced by the Credit amount. Otherwise, purchasers could apply for Contracts for the sole purpose of exercising the free look provision and making a quick profit.

9. Applicants submit that the provisions for recapture of any Credit under the Contracts does not, and any such Future Contract provisions will not, violate Section 2(a)(32) and 27(i)(2)(A) of the 1940 Act. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Credit under the circumstances summarized herein with respect to Contracts and Future Contracts, without the loss of the relief from section 27 provided by Section 27(i).

10. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of; and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c-1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of; or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

11. Arguably, the Insurance Companies' recapture of the Credit might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts. Applicants contend, however, that recapture of the Credit does not violate Section 22(c) and Rule 22c-1. Applicants argue that the recapture of the Credit does not involve either of the evils that Rule 22c-1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii)

other unfair results including speculative trading practices. See Adoption of Rule 22c-1 under the 1940 Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Credit, the Insurance Companies will redeem interests in an owner's annuity account at a price determined on the basis of current net asset value of the Account. The amount recaptured will equal the amount of the Credit that the Insurance Companies paid out of their general account assets. Although the owner will be entitled to retain any investment gain attributable to the Credit, the amount of such gain will be determined on the basis of the current net asset value of the Account. Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. However, to avoid any uncertainty as to All compliance with the 1940 Act, Applicants request an exemption from the provisions of Section 22(c) of Rule 22c-1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contracts.

Conclusion

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 act that has not already been addressed in their application described herein. Applicants submit that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the 1940 Act, namely, that the exemptions requested

are 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, and that, therefore, the Commission should grant the requested order.

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-24221; File No. 812-11824]

Nationwide Life Insurance Company, et al.

December 23, 1999.

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

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to permit the recapture of credits applied to purchase payments made under certain variable annuity contracts.

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit, under specified circumstances, the recapture of credits applied to contributions made under the contracts (the "Contracts") that Nationwide will issue through the Separate Accounts, as well as other contracts that Nationwide may issue in the future through Future Separate Accounts that are substantially similar in all material respects to the Contracts (the "Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Nationwide that may in the future serve as general distributor-principal underwriter of variable annuity contracts substantially similar in all material respects to those offered by the Separate Accounts.

APPLICANTS: Nationwide Life Insurance Company ("NLIC"), Nationwide Life and Annuity Insurance Company ("NLAIC") (NLIC and NLAIC shall be collectively referred to as "Nationwide"), Nationwide Variable

Account—9 and Nationwide Fidelity Advisor Variable Account (collectively, the "Separate Accounts") and any current or future separate accounts of Nationwide ("Future Separate Accounts") that may in the future offer variable annuity contracts substantially similar in all material respects to the contracts and supported by the Separate Accounts, Nationwide Advisory Services, Inc. ("NAS"), Fidelity Investment Institutional Services Company, Inc. ("FIISC"), and any other NASD member broker-dealer controlling or controlled by, or under common control with, Nationwide that may in the future serve as general distributor-principal underwriter of variable annuity contracts substantially similar in all material respects to those offered by the Separate Accounts (collectively "Applicants").

FILING DATE: The Application was filed on October 6, 1999, and amended and restated on December 23, 1999.

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 January 17, 1999, 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 issue 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, NW, Washington, DC 20549-0609.

Applicants, c/o Nationwide Life Insurance Company, One Nationwide Plaza 01-09-V3, Columbus, Ohio 43215, Attn: Heather Harker, Esq.

FOR FURTHER INFORMATION CONTACT: Jane G. Heinrichs, Senior Counsel, at (202) 942-0699, or Susan M. Olson, 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 is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. NLIC and NLAIC are stock life insurance companies organized under

Ohio law. NLIC is licensed to do business in all fifty states, the District of Columbia and Puerto Rico. NLAIC is licensed to do business in 47 states. NLIC is a wholly owned subsidiary of Nationwide Financial Services, Inc., a holding company. NLAIC is a wholly owned subsidiary of NLIC.

2. Nationwide Variable Account—9 was established on May 21, 1997 and Nationwide Fidelity Advisor Variable Account was established on July 22, 1994. The Separate Accounts are segregated asset accounts of NLIC established under Ohio law for the purpose of funding variable annuity contracts. Any income, gains or losses, realized or unrealized, from assets allocated to the Separate Accounts, are in accordance with the respective Separate Accounts' contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of Nationwide. The Separate Accounts are registered with the Commission as unit investment trusts under the 1940 Act.¹ The Separate Accounts fund variable annuity contracts which are registered with the Commission under the Securities Act of 1933 on Forms N-4.²

3. NAS and FIISC serve as general distributor-principal underwriter for Nationwide Variable Account—9 and Nationwide Fidelity Advisor Variable Account, respectively. Both entities are registered broker/dealers under the Securities Exchange Act of 1934.

4. The Contracts are sold to individuals as: (i) Non-qualified contracts which are governed for tax purposes by Section 72 of the Internal Revenue Code (the "Code"); (ii) individual retirement annuities (IRAs), Roth IRAs, SEP IRAs or Simple IRAs which are governed by Section 408 of the Code; (iii) Tax Sheltered Annuities which are governed by Section 403(b) of the Code; or (iv) Investment-Only Contracts, sold to qualified plans governed by Section 401(a) of the Code.

5. The Contracts issued in conjunction with the Separate Accounts are identical in every material respect, except in the array of underlying mutual funds which comprise the variable investment options under the Contracts. Nationwide Variable Account—9 is currently divided into 41 sub-accounts; Nationwide Fidelity Advisor Variable Account is divided into 14 sub-accounts. The Contracts are combination fixed and variable contracts; investment allocations that

¹ File No. 811-8666.

² File No. 333-28995 for Nationwide Variable Account—9 and File No. 33-89560 for Nationwide Fidelity Advisor Variable Account.