

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-26961 Filed 10-25-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25219; File No. 812-12252]

### Great American Life Insurance Company of New York, et al.

October 22, 2001.

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

**ACTION:** Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder for the recapture of certain bonus credits.

**APPLICANTS:** Great American Life Insurance Company of New York ("GALIC NY"), Annuity Investors Life Insurance Company ("Annuity Investors," and together with GALIC NY, the "Insurance Companies"), GALIC of New York Separate Account I ("Separate Account I"), Annuity Investors Variable Account A ("Variable Account A"), Annuity Investors Variable Account B ("Variable Account B," and together with Separate Account I and Variable Account A, the "Current Accounts"), and Great American Advisors, Inc. (together with Insurance Companies and Current Accounts, the "Applicants").

**SUMMARY OF APPLICATION:** Applicants seek an order to permit, under specified circumstances, the recapture of certain bonuses applied to purchase payments made under: (1) Certain deferred variable annuity contracts and certificates, described herein, that the Insurance Companies issue through any of their Current Accounts (the contracts and certificates, including certain data pages and endorsements, are collectively referred to herein as the "Bonus Contracts"); and (2) contracts and certificates, including certain data pages and endorsements, that the Insurance Companies may issue in the future ("Future Bonus Contracts," and together with the Bonus Contracts, "Contracts") through any of their Current Accounts or through any future separate account of the Insurance Companies ("Future Accounts," and together with the Current Accounts, the

"Accounts"). Such Future Bonus Contracts will be substantially similar to the Bonus Contracts in all material respects. 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 offered through the Accounts (collectively, "Future Underwriters").

**FILING DATE:** The application was filed on September 13, 2000, and amended and restated on October 15, 2001.

**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 must be received by the Commission by 5:30 p.m. on November 16, 2001, 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 requester'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 Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, Carol Edwards Dunn, Esq., Great American Life Insurance Company of New York, Annuity Investors Life Insurance Company, P.O. Box 5420, Cincinnati, Ohio 45201-5420.

**FOR FURTHER INFORMATION CONTACT:** Kenneth C. Fang, Attorney at (202) 942-0685, or Keith E. Carpenter, Branch Chief, at (202) 942-0679, 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 Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

### Applicants' Representations

#### Applicants

1. GALIC NY is a stock life insurance company organized under the laws of the State of New York. GALIC NY is a wholly-owned subsidiary of Great American Life Insurance Company, a

life insurance company domiciled in the State of Ohio, that is a wholly-owned subsidiary of Great American Financial Resources, Inc. (formerly known as American Annuity Group, Inc.), a publicly-traded insurance holding company. Great American Financial Resources, Inc. is indirectly controlled by American Financial Group, Inc., a publicly-traded holding company. GALIC NY serves as depositor of Separate Account I, which was established in May 1999. GALIC NY may establish one or more Future Accounts for which it will serve as depositor.

2. Annuity Investors is a stock life insurance company organized under the laws of the State of Ohio. Annuity Investors also is a wholly-owned subsidiary of Great American Life Insurance Company. Annuity Investors serves as depositor of both Variable Account A and Variable Account B, which were established in May 1995 and December 1996, respectively. Annuity Investors may establish one or more Future Accounts for which it will serve as depositor.

3. Great American Advisors, Inc. ("GAA") (formerly known as, "AAG Securities, Inc.") is the principal underwriter of the Current Accounts and is the distributor of the variable annuity contracts funded through those Current Accounts. GAA is a wholly-owned subsidiary of Great American Financial Resources, Inc. GAA is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and is a member of the NASD. The variable annuity contracts issued by the Current Accounts are offered or will be offered through registered representatives of GAA or others who are registered broker-dealers under the Exchange Act and NASD members and who have entered into selling agreements with GAA or any Future Underwriter. GAA or any Future Underwriter may act as principal underwriter for any Future Account and distributor for any Future Bonus Contracts. A Future Underwriter also may act as principal underwriter for any of the Accounts and distributor for any of the Contracts.

4. Separate Account I is a segregated asset account of GALIC NY, and Variable Account A and Variable Account B are each segregated asset accounts of Annuity Investors. Each Account is or will be registered with the Commission as a unit investment trust under the Act. Each Account funds or will fund the variable benefits available under the Contracts issued through that Account. Units of interest in each

Account are registered or will be registered under the Securities Act of ("1933 Act").

5. GALIC NY and/or Annuity Investors may issue Future Bonus Contracts through their respective Current Accounts or Future Accounts. That portion of the respective assets of the Current Accounts that is equal to the reserves and other contract liabilities with respect to the Current Accounts is not chargeable with liabilities arising out of any other business of GALIC NY or Annuity Investors, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to any Current Account are, in accordance with the Bonus Contracts, credited to or charged against the Current Account, without regard to other income, gains or losses of GALIC NY or Annuity Investors, as the case may be. The same will be true of any Future Accounts of either Insurance Company.

#### *The Bonus Contracts*

6. The Bonus Contracts are individual or group flexible premium deferred annuity contracts that may be issued on a tax-qualified or non-tax-qualified basis. Currently, the Bonus Contracts may be purchased: (1) With a minimum initial payment of \$2,000 for tax-qualified Bonus Contracts and \$5,000 for non-tax-qualified Bonus Contracts, or (2) under a periodic payment program in minimum installments of \$50 per month for tax-qualified Bonus Contracts and \$100 per month for non-tax-qualified Bonus Contracts. A Bonus Contract owner may make additional payments, which require a \$50 minimum for either tax-qualified or non-tax-qualified Bonus Contracts, subsequent to the initial payment. The maximum single purchase payment on either a tax-qualified or non-tax-qualified Bonus Contract is \$500,000 without prior approval from the respective Insurance Companies. These maximums and minimums may be different for Future Bonus Contracts, and may be prospectively changed by rider or endorsement for Bonus Contracts. Any such changes would be disclosed in the applicable prospectus(es). Future Bonus Contracts will be substantially similar in all material respects to the Bonus Contracts.

7. Each time one of the Insurance Companies receives a purchase payment from an owner of a Bonus Contract, it will credit to the owner's account value a bonus ("Bonus") equal to 4% of each purchase payment. The Bonus will be allocated according to the allocation instructions in effect for purchase payments under the particular Bonus

Contract and will generally be deemed to be a purchase payment under a Bonus Contract. This means that a contingent deferred sales charge ("CDSC"), to the extent applicable to the purchase payment, will be deducted from the Bonus amount if the Bonus is returned to the Bonus Contract owner (rather than being recaptured) on a full or partial surrender after the first Contract year. A CDSC would not be imposed with respect to any Bonus amounts that are recaptured upon cancellation during the free-look period. A CDSC is also not imposed with respect to any Bonus amounts upon full or partial surrender during the first Contract year. The CDSC is calculated separately for each purchase payment surrendered, based on the number of full years elapsed between the date of receipt of the purchase payment and the date that the request for surrender was received. No portion of the Bonus will be recaptured on a partial surrender.

8. The Insurance Companies will fund Bonus amounts from their respective general account assets. The Insurance Companies will recapture from a Bonus Contract owner: (1) Any Bonus previously credited if the owner returns the Bonus Contract for a refund during the free-look period; and (2) any Bonus previously credited to any purchase payment made during the First Contract year, if the Bonus Contract is surrendered in full during the first Contract year.

9. The owner of an individual Bonus Contract may cancel the Bonus Contract before midnight of the 20th day following the date the owner receives the Bonus Contract unless a longer period is required by state law. If the owner cancels the Bonus Contract during the applicable time period, the Bonus Contract will be void, and the Insurance Companies will refund the purchase payment(s) in full, less the Bonus amounts credited to the purchase payment(s) and plus or minus any investment gains or losses under the Bonus Contract as of the end of the valuation period during which the returned Bonus Contract or the cancellation request is received by the Insurance Company (unless a full return of purchase payments is required under state law).

10. Owners of the Bonus Contracts may allocate their purchase payments to any of the available sub-accounts or fixed account options. Each sub-account invests in shares of a corresponding registered investment company or series thereof (each, a "Portfolio").

11. The Bonus Contracts provide for various surrender options, annuity benefits, and annuity payout options, as

well as transfer privileges among the Portfolios, dollar cost averaging, and other features. The Bonus Contracts contain the following charges: (1) a CDSC based on the number of full years elapsed between the date of receipt of the purchase payment and the date that the request for surrender was received equal to a maximum of 8% of purchase payments surrendered (including, after the first contract year, any Bonuses credited thereto), declining to 0% after seven years, which may be waived in certain circumstances as disclosed in the prospectus for the Bonus Contract; (2) a \$30 annual Bonus Contract maintenance fee, which may be waived in certain circumstances as disclosed in the prospectus for the Bonus Contract; (3) a mortality and expense risk fee at an effective annual rate of 1.25%; (4) an administration charge at an effective annual rate of 0.15%, which may be waived where the Insurance Company incurs reduced sales and servicing expenses; (5) a transfer fee of \$25 for each transfer in excess of twelve in any Bonus Contract year; and (6) any applicable state and local government premium taxes. In addition, assets invested in the Portfolios are charged with annual operating expenses of those Portfolios. All such fees and charges, and circumstances under which such fees and charges may be reduced or waived, are described in greater detail in the "CHARGES AND DEDUCTIONS" section of the prospectus contained in the Form N-4 Registration Statements of the Insurance Companies and the Current Accounts.

#### **Applicants' Legal Analysis**

1. Section 6(c) of the 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 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 policy and provisions of the Act.

2. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions summarized above with respect to the Bonus Contracts and any Future Bonus Accounts or Future Accounts, which are issued by GALIC NY or Annuity Investors and underwritten or distributed by GAA or Future Underwriters. Applicants state that Future Bonus Contracts funded by the Current Accounts or Future Accounts will be substantially similar in all material respects to the Bonus

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 Act.

3. Applicants state that it is not administratively feasible to track the Bonus amount in any of the Accounts after the Bonus 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 Bonus amount, including during the period when the Bonus is not completely vested (i.e., upon cancellation during the free-look period or upon full surrender during the first contract year). As a result, during such periods, the aggregate asset-based charges assessed against a Contract owner's account value will be higher than those that would be charged if the Contract owner's account value did not include the Bonus.

4. Section 27(i) of the 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 any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a "redeemable security." Section 2(a)(32) of the Act 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.

5. Applicants submit that the Bonus recapture provisions described herein would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. Applicants state that a Contract owner's interest in the amount of the Bonus allocated to his or her annuity account value upon receipt of an initial purchase payment is not vested if the Contract is returned during the applicable free-look period. Similarly, Applicants submit that a Contract owner's interest in the amount of any Bonuses allocated upon receipt of any purchase payments made during the first contract year is not vested if the Contract is surrendered in full during the first Contract year. Until or unless the amount of any Bonus is vested, Applicants argue that the applicable

Insurance Company retains the right and interest in the Bonus amount, although not in the earnings attributable to that amount. Thus, when any Bonus amounts are recaptured, the Insurance Companies are simply retrieving their own assets. Because the Contract owner's interest in the Bonus is not vested, Applicants contend that the Contract owner has not been deprived of a proportionate share of the applicable Account's assets.

6. Applicants state that, with respect to the Bonus recapture upon the exercise of the free-look privilege, it would be patently unfair to allow a Contract owner to exercise that privilege and retain a Bonus amount under a Contract that has been returned for a refund after a period of a few weeks or days. If the Insurance Company could not recapture the Bonus, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

7. Applicants also state that the recapture of Bonuses relating to all purchase payments made within the first Contract year if the Contract is surrendered in full during that year is designed to afford the Insurance Companies with a measure of protection from anti-selection. The risk here is that the Contract owner could make very large purchase payments throughout the first year of the Contract and then fully surrender the Contract, thereby leaving GALIC NY or Annuity Investors less time to recover the cost of the Bonuses, to its financial detriment.

8. For the foregoing reasons, Applicants submit that the provisions for recapture of any applicable Bonus under the Bonus Contracts do not, and any provisions in Future Bonus Contracts will not, violate Section 2(a)(32) and 27(i)(2)(A) of the Act. Indeed, Applicants believe that a contrary conclusion would be inconsistent with a stated purpose of the National Securities Markets Improvement Act of 1996 ("NSMIA"), which is "to amend the [act] to \* \* \* provide more effective and less burdensome regulation." Sections 26(e) and 27(i), of course, were added to the Act pursuant to Section 205 of NSMIA to implement the purposes of NSMIA and the Congressional intent. Thus, the recapture of a Bonus credited to purchase payments made under the Contracts should not raise any questions as to the Insurance Companies' compliance with the provisions of Section 27(i). Nevertheless, to avoid any uncertainties as to full compliance with the Act, Applicants request exemptions from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit

the recapture of any Bonus under the circumstances described herein with respect to the Bonus Contracts and any Future Bonus Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the 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 to accomplish the same purposes as contemplated by Section 22(a). 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.

10. Applicants state that the Insurance Companies' recapture of the Bonus 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 Bonus does not violate Section 22(c) and Rule 22c-1.

11. Applicants maintain that the recapture does not involve either of the problems that Rule 22c-1 was designed to prevent, 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 their redemption or repurchase at a price above it, and (ii) other unfair practices such as speculative trading practices. These problems were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases in net asset value that were not yet reflected in the price, thereby diluting the value of outstanding mutual fund shares.

12. Applicants also maintain that the proposed recapture of the Bonus poses no such threat of dilution. To effect a recapture of a Bonus, the Insurance Companies will redeem interests in the Contract owner's annuity account at a price determined on the basis of current net asset value of the respective Accounts. The amount recaptured will

equal the amount of the Bonus that the applicable Insurance Company paid or will pay out of its general account assets. Although Contract owners will be entitled to retain any investment gain attributable to the Bonus, the amount of such gain will be determined on the basis of the current net asset value of the respective Accounts. Thus, no dilution will result from the recapture of the Bonus. The second problem that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, also will not occur as a result of the recapture of the Bonus.

13. Applicants argue that, because neither of the problems that Rule 22c-1 was designed to address is found in the recapture of the Bonus, Rule 22c-1 and Section 22(c) should have no application to any Bonus under the Bonus Contracts or Future Bonus Contracts. However, to avoid any uncertainty as to full compliance with the Act, Applicants request exemptions from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recapture the Bonus under the Bonus Contracts and Future Bonus Contracts.

### Conclusion

For the reasons summarized above, Applicants submit that their request for exemptions from Section 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder meets the standards set out in Section 6(c) of the Act. Applicants submit that the requested order should therefore be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-27019 Filed 10-25-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25218; 812-12604]

### Putnam American Government Income Fund, et al.; Notice of Application

October 22, 2001.

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

**ACTION:** Notice of an application under section 17(d) of the Investment Company Act of 1940 (the "Act" and rule 17d-1 under the Act to permit certain joint transactions.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit certain

registered management investment companies to pay to an affiliated lending agent, and the lending agent to accept, fees based on a share of the revenues generated from securities lending transactions.

**Applicants:** Putnam American Government Income Fund, Putnam Arizona Tax Exempt Income Fund, Putnam Asia Pacific Growth Fund, Putnam Asset Allocation Funds, Putnam Balanced Retirement Fund, Putnam California Investment Grade Municipal Trust, Putnam California Tax Exempt Income Fund, Putnam California Tax Exempt Money Market Fund, Putnam Capital Appreciation Fund, Putnam Classic Equity Fund, Putnam Convertible Income-Growth Trust, Putnam Convertible Opportunities And Income Trust, Putnam Diversified Income Trust, Putnam Equity Income Fund, Putnam Europe Growth Fund, Putnam Florida Tax Exempt Fund. The Putnam Fund For Growth And Income Putnam Funds Trust, The George Putnam Fund Of Boston, Putnam Global Equity Fund, Putnam Global Government Income Trust, Putnam Global Growth Fund, Putnam Global Natural Resources Fund, The Putnam Fund For Growth And Income, Putnam Health Sciences Trust, Putnam High Income Convertible And Bond Fund, Putnam High Yield Advantage Fund, Putnam High Yield Municipal Trust, Putnam High Yield Trust, Putnam Income Fund, Putnam Intermediate U.S. Government Income Trust, Putnam International Growth Fund, Putnam Investment Funds, Putnam Investment Grade Municipal Trust, Putnam Investors Fund, Putnam Managed High Yield Trust, Putnam Managed Municipal Income Trust, Putnam Massachusetts Tax Exempt Income Fund, Putnam Master Income Trust, Putnam Master Intermediate Income Trust, Putnam Michigan Tax Exempt Income Fund, Putnam Minnesota Tax Exempt Income Fund, Putnam Money Market Fund, Putnam Municipal Bond Fund, Putnam Municipal Income Fund, Putnam Municipal Opportunities Trust, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Investment Grade Municipal Trust, Putnam New York Tax Exempt Income Fund, Putnam New York Tax Exempt Money Market Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund, Putnam OTC & Emerging Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, Putnam Preferred Income Fund, Putnam Premier Income Trust, Putnam Strategic

Income Fund, Putnam Tax Exempt Income Fund, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free Health Care Fund, Putnam Tax-Free Income Trust, Putnam Tax Smart Funds Trust, Putnam U.S. Government Income Fund, Putnam Utilities Growth And Income Fund, Putnam Variable Trust, Putnam Vista Fund, Putnam Voyager Fund, and Putnam Voyager Fund II (each a "Fund," collectively the "Funds"), Putnam Investment Management, LLC (the "Adviser") and Putnam Fiduciary Trust Company ("PFTC").

**FILING DATES:** The application was filed on August 16, 2001, and amended on September 18, 2001.

**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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 15, 2001, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Applicants, c/o John W. Gerstmayr, Esq., Ropes & Gray, One International Place, Boston, Massachusetts 02110.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 942-0634, or Nadya B. Royblat, Assistant Director, at (202) 942-0564, Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549-0102 (tel. 202-942-8090).

### Applicants' Representations

1. The Funds, each a Massachusetts business trust, are registered under the Act as management investment companies. Some of the Funds consist of multiple investment portfolios. The Adviser serves as investment adviser to each Fund. PFTC is the custodian and the shareholder servicing and distribution agent for each Fund.