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Dated: December 9, 2004.

**Dave Gamberoni,**

*Office of the Secretary.*

[FR Doc. 04-27404 Filed 12-10-04; 9:22 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26690; 812-13139]

### AIG Annuity Life Insurance Company, et al.; Temporary Order and Notice of Application

December 8, 2004.

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

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

**SUMMARY OF APPLICATION:** Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against American International Group, Inc. ("AIG") on or about December 7, 2004 by the United States District Court for the District of Columbia (the "Injunction"), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

**APPLICANTS:** AIG Annuity Life Insurance Corporation ("AIG Annuity"), AIG Equity Sales Corp. ("AIG Equity"), AIG Global Investment Corp. ("AIGGIC"), AIG Life Insurance Company ("AIG Life"), AIG SunAmerica Asset Management Corp. ("SunAmerica Asset Management"), AIG SunAmerica Capital Services, Inc. ("SunAmerica Capital"), AIG SunAmerica Life Assurance Company ("SunAmerica Life"), American General Distributors, Inc. ("AM Distributors"), American General Equity Services Corp. ("AM Equity"), American General Life Insurance Company ("AM Life"), American International Life Assurance Company of New York ("AILAC"), Brazos Capital Management, L.P. ("Brazos"), First SunAmerica Life Insurance Company ("First SunAmerica"), The United States Life Insurance Company in the City of New York ("US Life"), and The Variable

Annuity Life Insurance Company ("VALIC").<sup>1</sup>

**FILED DATE:** The application was filed on December 1, 2004.

**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 January 3, 2005, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants: Ernest T. Patrikis, American International Group, Inc., 70 Pine Street, New York, New York 10270.

**FOR FURTHER INFORMATION CONTACT:** Janis F. Kerns, Senior Counsel, or Todd F. Kuehl, Branch Chief, at 202-942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and 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' Representation

1. The Applicants, except Brazos, are wholly-owned subsidiaries of AIG. Brazos is a majority-owned subsidiary of AIG. AIG, through its subsidiaries, offers property and casualty and life insurance products to commercial, institutional and individual customers worldwide. AIG's global businesses also include retirement services, financial services and asset management. AIGGIC, SunAmerica Asset Management, Brazos, and VALIC are investment advisers registered under the Investment Advisers Act of 1940 and serve as investment adviser or sub-adviser to certain registered investment companies ("Funds"). AIG Annuity, AIG Equity,

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which AIG is or hereafter becomes an affiliated person (together with AIG and the Applicants, the "Covered Persons").

AIG Life, SunAmerica Capital, SunAmerica Life, AM Distributors, AM Equity, AM Life, AILAC, First SunAmerica, US Life and VALIC are broker-dealers registered under the Securities Exchange Act of 1934 ("Exchange Act") serving as a principal underwriter, or are a depositor, for open-end Funds and unit investment trusts.

2. On or about December 7, 2004, the United States District Court for the District of Columbia entered the Injunction against AIG in a matter brought by the Commission.<sup>2</sup> The Commission alleged in the complaint ("Complaint") that AIG violated section 10(b) of the Exchange Act and rule 10b-5 promulgated thereunder and section 17(a) of the Securities Act of 1933 and aided and abetted violations of sections 13(a) and 13(b)(2)(A) of the Exchange Act and rules 12b-20, and 13a-13 thereunder in connection with certain transactions between subsidiaries of The PNC Financial Services Group, Inc. ("PNC") and certain subsidiaries of AIG, and similar transaction marketed by certain subsidiaries of AIG to other publicly traded companies. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, AIG consented to the entry of the Injunction as well as the payment of disgorgement, penalties and prejudgment interest.

### Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines affiliated person to include any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that AIG is an affiliated person of each of the Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the

<sup>2</sup> *Securities and Exchange Commission v. American International Group, Inc.*, Civil Action No. 1:04CV02070 (D.D.C., filed November 30, 2004).

Injunction, they may be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) of the Act seeking temporary and permanent orders exempting them from the provisions of section 9(a) of the Act.

3. Applicants believe that they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

Applicants state that none of their current or former officers, directors or employees who are engaged in the provision of investment advisory or underwriting services to the Funds participated in any way in the conduct described in the Complaint. Applicants also state that although some of the Funds advised by the Applicants held PNC securities in their portfolios during the time discussed in the Complaint, as far as Applicants are aware none of the officers, portfolio managers or any other investment personnel employed by the Applicants had any knowledge of any non-public information relating to, or had any involvement in, the conduct alleged in the Complaint. Applicants state that they are entirely separate from AIG's businesses that were involved in the conduct described in the Complaint. Applicants further state that they have adopted policies and procedures designed to protect the Applicants' clients, including the Funds' shareholders, from any conflict of interest that may arise between the Applicants' portfolio managers and AIG's other businesses referenced in the Complaint. Additionally, Applicants assert that if they were barred from providing services to registered investment companies, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to support their advisory, sub-advisory and underwriting activities. Applicants state that they have not previously received any orders under section 9(c) of the Act.

4. Applicants state that their inability to continue providing advisory services

to the Funds and the inability to continue to serve as depositor or principal underwriter to the Funds would result in potential hardships for the Funds and their shareholders. The Applicants also state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors ("Boards") of the Funds for which the Applicants serve as investment adviser or principal underwriter, including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel, regarding the Injunction, any impact on the Funds and this application. The Applicants will provide such Funds' Boards with all information concerning the Injunction and this application necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

#### **Applicant's Condition**

Applicants agree that the order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

#### **Temporary Order**

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly, *It is hereby ordered*, pursuant to section 9(C) of the Act, that the Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the Commission takes final action on an application for a permanent order.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50812; File No. SR-AMEX-2004-81]

### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Nasdaq-100 Index**

December 7, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 4, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposed to list and trade notes, the performance of which is linked to the Nasdaq-100 Index ("Nasdaq-100" or "Index").

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

###### **1. Purpose**

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.