

death of the Certificate owner or the annuitant prior to the annuity start date.

10. Applicants state that ACL assumes an expense risk because the administrative charge may be insufficient to cover actual administrative expense. These include the costs and expenses of: (a) Processing purchase payments, retirement payments, surrenders and transfers; (b) furnishing conformation notices and periodic reports; (c) calculating mortality and expense risk charges; (d) preparing voting materials and tax reports; (e), updating registration statements; and (f) actuarial and other expenses.

11. If the mortality and expense risk charge is insufficient to cover the expenses and costs assumed, the loss will be borne by ACL. Conversely, if the amount deducted proves more than sufficient, the excess will represent profit to ACL expects to profit from the mortality and expense risk charge. Any profit realized from this charge will be available to ACL for any proper corporate purpose, including, among other things, payment of distribution expenses.

12. Although no charges currently are made for premium taxes or other federal, state or local taxes, ACL reserves the right to deduct such taxes from the ACL Account in the future.

Applicant's Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales load, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request an order under Section 6(c) exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets

of the ACL Account or Other ACL Accounts that issue the Contracts. Applicants also request that such relief extend to certain other broker-dealers other than AESC that may serve in the future as principal underwriter in respect of the Contracts offered by ACL and make available through the ACL Account or Other ACL Accounts.

4. Applicants submit that the requested relief to permit the deduction of the 1% mortality and expense risk charge from the assets of the ACL Account or Other ACL Accounts in connection with the issuance of Future Contracts is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for ADL to file redundant exemptive applications, thereby reducing ACL's administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in repeatedly having to seek exemptive relief would impair ACL's ability effectively to take advantage of business opportunities as these opportunities arise. If ACL were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby. Rather, Applicants assert that investors may be disadvantaged as a result of ACL's increased overhead expenses. Therefore, Applicants maintain that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

5. Applicants represent that the level of the mortality and expense risk charge under the Existing Contract is within the range of industry practice for comparable variable annuity contracts. Applicants state that ACL has reviewed publicly-available information about other annuity products taking into consideration such factors as current charge levels, charge guarantees, sales loads, surrender charges, availability of funds, investment options available under annuity contracts and market sector. Applicants state that ACL will maintain at its executive office, and make available on request of the Commission or its staff, a memorandum setting forth its analysis, including its methodology and results.

6. Applicants represent that, prior to offering any Future Contracts, Applicants will conclude that the mortality and expense risk charge under any such contracts (which cannot exceed in amount the mortality and expense risk charge under the Existing

Contract) will be within the range of industry practice for comparable contracts.

7. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of the profit may be available to pay distribution expenses. Notwithstanding the foregoing, ACL has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement being used in connection with the Contracts will benefit the ACL Account or Other ACL Accounts and owners of the Existing Contract or Future Contracts and related Certificates. The basis for such conclusion is set forth in a memorandum which will be maintained by ACL at its service office and will be available to the Commission or its staff on request.

8. ACL represents that the ACL Account and Other ACL Accounts will invest only in underlying mutual funds which, in the event they should adopt any plan pursuant to Rule 12b-1 under the 1940 Act to finance distribution expenses, would have such a plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applicants submit that, for the reasons stated in the application, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-19252 Filed 7-29-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-22090; No. 812-10120]

Great American Reserve Insurance Company, et al.

July 23, 1996.

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

ACTION: Notice of Application for an Order pursuant to the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Great American Reserve Insurance Company (the "Company"),

Great American Reserve Variable Annuity Account G (the "Separate Account"), and GARCO Equity Sales, Inc. ("GES").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Section 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of: (a) The Separate Account in connection with the offer and sale of certain combined fixed and variable annuity contracts and certificates ("Existing Contracts"); (b) the Separate Account in connection with the offer and sale of variable annuity contracts and certificates that are similar in all material respects to the Existing Contracts ("Future Contracts," together with Existing Contracts, the "Contracts"); and (c) any other separate account established in the future by the Company ("Future Account") in connection with the offer and sale of Contracts. Exemptive relief also is requested to the extent necessary to permit the offer and sale of Contracts for which broker-dealers other than GES ("Future Underwriters") serve as principal underwriters.

FILING DATE: The application was filed on May 2, 1996.

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 August 19, 1996, and must 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. Person may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Lawrence W. Inlow, Great American Reserve Insurance Company, 11825 North Pennsylvania Street, Carmel, Indiana 46032-4572.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Wendy Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942-0670.

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

Applicant's Representations

1. The Company, a stock life insurance company organized under the laws of Texas, is an indirect wholly-owned subsidiary of Conseco, Inc. The Company is authorized to do business in 47 states and the District of Columbia.

2. The Separate Account, a segregated asset account of the Company, was established on January 18, 1996. The Separate Account is registered with the Commission pursuant to the 1940 Act as a unit investment trust.

3. GES, an affiliate of the Company, will act as the principal underwriter in distributing the Existing Contracts. GES is registered as a broker-dealer pursuant to the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are available to individuals and groups in connection with retirement plans which may or may not qualify for federal tax advantages available under the Internal Revenue Code. Certificates will be issued to owners under group Contracts. The minimum initial purchase payment is \$50,000 (except for Contracts that qualify for federal tax advantages, for which the minimum initial purchase payment is \$10,000). The minimum subsequent purchase payment is \$1,000, or, if the monthly automatic premium check option is elected, \$250.

5. Purchase payments made under the Contracts will be allocated to the Separate Account or a market value adjustment account ("MVA Account"). The Separate Account is divided into subaccounts ("Subaccounts"), each of which invests in the shares of a corresponding portfolio of an underlying fund.

6. The Contracts provide for a series of annuity payments beginning on the annuity date. The owner of a Contract ("Owner") may select from several annuity payout options. Contract owners may allocate purchase payments or reallocate accumulation values or annuity values by transfers among the Subaccounts, the MVA Account or, when and if available, a fixed account which will be part of the general account of the Company.

7. The Contracts also provide for certain guaranteed death benefits during the accumulation period. Prior to the Owner attaining age 80, the death benefit will be the greater of: (a) the purchase payments, less any

withdrawals; or (b) the Contract value determined as of the end of the valuation period during which the Company receives both due proof of death and an election for the payment method. If the death of the Owner occurs after age 80, the death benefit will be the Contract value determined as of the end of the valuation period during which the Company receives both due proof of death and an election for the payment method.

8. A premium tax charge, ranging from 0 to 3.5 percent of purchase payments, may be deducted from the purchase payments or Contract value when incurred, if the Owner lives in a state or locality that levies premium taxes. Currently, the Company deducts the charge for premium taxes from Contract value at the time annuity payments begin or from amounts that are withdrawn.

9. A fee ("Transfer Fee") which is equal to the lesser of \$25 or 2 percent of the amount transferred is imposed when an Owner exceeds the frequency or number of free reallocation transfers permitted under the Contracts. Currently, there is no limit on the number of transfers permitted each Contract year during the accumulation period, but only one transfer in a 30-day period can be made free of the Transfer Fee. Four transfers are currently permitted each Contract year during the annuity period; none of these four transfers are subject to the Transfer Fee.

10. A \$30.00 charge is deducted on each Contract anniversary and on surrender of a Contract for expenses relating to the maintenance of the Contracts ("Contract Maintenance Charge"), which may be increased up to a maximum of \$60.00 each Contract year. No Contract Maintenance Charge is deducted if the Contract value of the Contract anniversary is at least \$25,000. No Contract Maintenance Charge is deducted during the annuity period. Applicants represent that the Contract Maintenance Charge is at cost with no anticipation of profit.

11. The Company deducts a charge at a current annual rate of .15 percent of the average daily net asset value of each Subaccount ("Administrative Charge"). The Company may increase this charge to a maximum of .25 percent of the average daily net asset value of each of the Subaccounts. The Company will give Owners 90 days notice before implementing any increase to this charge. This charge, together with the Contract Maintenance Charge, reimburses the Company for the expenses it incurs in the establishment and maintenance of the Contracts and the Separate Account. Applicants

represent that the Administrative Charge is at cost with no anticipation of profit.

12. The Company assumes certain mortality risks under the Contracts because of its contractual obligations to make annuity payments after the annuity date regardless of how long all annuitants live. Further, the Company bears a mortality risk in that it guarantees the annuity purchase rates for the annuity options under the Contracts. Also, the Company bears a mortality risk with respect to the death benefit.

13. The Company assumes an expense risk because the actual expenses it incurs in administering the Contracts may exceed the amounts it recovers from assessing the Contract Maintenance Charge and the Administrative Charge.

14. The Company requests exemptive relief to allow the deduction of a charge at a maximum annual rate of 1.25 percent of the average daily net asset value of the Subaccounts ("Mortality and Expense Risk Charge") as compensation for assuming the mortality and expense risks under the Contracts. Approximately .75 percent of this 1.25 percent charge will be allocable to mortality risks and .50 percents to expense risks. The Company intends to initially assess a Mortality and Expense Risk Charge at an annual rate of 1.15 percent of the average daily net asset value of the Subaccounts, of which .65 percent will be allocable to mortality risks and .50 percent to expense risks. If the Company increases the Mortality and Expense Risk Charge to its guaranteed maximum annual rate of 1.25 percent, the Company will provide Owners with 90 days notice of this increase.

15. The Company will bear the loss if the Mortality and Expense Risk Charge is insufficient to cover the actual costs associated with its mortality and expense risks. Conversely, if the amounts derived from the Mortality and Expense Risk Charge are more than sufficient, the excess will be a profit that is added to the surplus of the Company and which can be used for any lawful purpose, including the payment of distribution expenses. The Company expects to profit from the Mortality and Expense Risk Charge.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to conditionally or unconditionally 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 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.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust and its depositor or principal underwriter from selling periodic payment plan certificates unless the proceeds of all payments plan certificates unless the proceeds of all payments (other than sales loads) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to allow the Company to deduct the Mortality and Expense Risk Charge from the assets of the Separate Account and from any Future Accounts in connection with the issuance of the Contracts and any Future Contracts. Exemptive relief also is required to the extent necessary to permit the offer and sale of Contracts for which Future Underwriters serve as the principal underwriter.

4. Applicants assert that a Mortality and Expense Risk Charge of 1.25 percent is reasonable in relation to the risks assumed by the Company under the Contracts and within the range of industry practice with respect to comparable annuity products. Applicants state that these determinations are based upon an analysis of publicly available information about comparable products, and by talking into consideration such factors as guaranteed annuity purchase rates, death benefits current charge levels and the existence of charge level guarantees. The Company will maintain at its principal office, available to the Commission upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of this comparative analysis.

5. Applicants represent that, before relying on any exemptive relief in connection with Future Contracts funded by the Separate Account or any Future Account, Applicants will determine that any mortality and expense risk charges under such Future Contracts will be reasonable in relation to the risks assumed by the Company and reasonable in amount as determined

by industry practice with respect to comparable annuity products. Applicants represent that the Company will maintain at its principal office, and make available to the Commission upon request, a memorandum setting forth in detail the methodology used in making these determinations.

6. The Company may recover distribution costs from the assets of its general account, which may include that portion of the Mortality and Expense Charge which is profit to the Company. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Owners. The basis for that conclusion is set forth in a memorandum which will be maintained by the Company at its principal office available to the Commission upon request.

7. Applicants represent that, prior to relying on any exemptive relief in connection with Future Contracts, Applicants will determine that there is a reasonable likelihood that the distribution financing arrangement will benefit the Separate Account and its investors or the Future Account and its investors. The Company represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such determination.

8. The Company further represents that the Separate Account and any Future Account will invest only in management investment companies which undertake, in the event they should adopt any plan pursuant to Rule 12b-1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by the members of their board of directors, a majority of whom shall not be "interested persons" of such companies within the meaning of Section 2(a)(19) of the 1940 Act.

9. Applicants submit that their request for exemptive relief that applies to Future Contracts, Future Accounts and Future Underwriters is appropriate in the public interest because such relief will promote competitiveness in the variable annuity contract market by eliminating their administrative expenses and maximizing the efficient use of their resources. Applicants assert that the delay and expense involved in having repeatedly to seek exemptive relief would impair their ability to effectively take advantage of business opportunities as such opportunities arise. Applicants also assert that if they were required repeatedly to seek exemptive relief with respect to the

same issues, investors would not receive any benefit or additional protection.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and 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.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-19248 Filed 7-29-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-22088; No. 812-10144]

IDS Life Insurance Company of New York, et al.

July 23, 1996.

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

ACTION: Notice of application for an order pursuant to the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: IDS Life Insurance Company of New York ("IDS Life"), IDS Life of New York Flexible Portfolio Annuity Account (the "Variable Account"), and American Express Financial Advisors Inc. ("Advisors").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of (a) the Variable Account in connection with the offer and sale of certain variable annuity contracts ("Existing Contracts"); (b) the Variable Account in connection with the issuance of variable annuity contracts that are substantially similar in all material respects to the Existing Contracts ("Future Contracts," together with Existing Contracts, the "Contracts"); and (c) any other separate account established in the future by IDS Life in connection with the issuance of Contracts ("Future Accounts"). Exemptive relief also is requested to the extent necessary to permit the offer and sale of Contracts for which certain broker-dealers other than Advisors serve as the principal underwriter.

FILING DATE: The application was filed on May 14, 1996.

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 August 19, 1996, and must be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549. Applicants, c/o Mary Ellyn Minenko, Counsel, IDS Life Insurance Company of New York, IDS Tower 10, Minneapolis, Minnesota 55440.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Wendy F. Friedlander, Deputy 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 may be obtained for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. IDS Life is a stock life insurance company which is organized under the laws of New York. IDS Life is a wholly-owned subsidiary of IDS Life Insurance Company, a stock insurance company organized under the laws of Minnesota, which is a wholly-owned subsidiary of American Express Financial Corporation.

2. Advisors, the principal underwriter for the Variable Account, is registered as a broker-dealer pursuant to the Securities Exchange Act of 1934 ("1934 Act") and is a member of the National Association of Securities Dealers, Inc. ("NASD").

3. The Variable Account was established on April 17, 1996, as a separate account pursuant to the laws of New York. The Variable Account will be used to fund the Existing Contracts.

4. The Existing Contracts are available for purchase in connection with retirement plans that qualify for federal tax advantages available pursuant to the Internal Revenue Code ("qualified contracts") or for plans that do not so qualify ("non-qualified contracts").

5. The Existing Contracts provide for the accumulation of contract values and payment of annuity benefits on a fixed and/or variable basis. Purchase payments may be directed to the general account of IDS Life pursuant to a fixed account option (the "Fixed Account"), the Variable Account, or allocated between them. Existing Contracts may be purchased with either an initial purchase payment, of at least \$2,000 for nonqualified Contracts and \$1,000 for qualified Contracts, or installment payments. Additional purchase payments may be made in accordance with certain requirements.

6. The Variable Account currently has fourteen subaccounts ("Subaccounts"), each of which will invest solely in the shares of one of the corresponding funds of a registered open-end management investment company managed by IDS Life Insurance Company (the "Funds"). IDS Life may create additional subaccounts and/or variable accounts to invest in additional Funds as future investment options.

7. Prior to the annuity date, the owner of an Existing Contract can, at any time, transfer all or part of the Contract value held in one or more of the Subaccounts or the Fixed Account to another Subaccount or the Fixed Account. However, if an owner of an Existing Contract has made a transfer from the Fixed Account to a Subaccount, the Contract owner may not transfer from any Subaccount back to the Fixed Account until the next Contract anniversary. Once annuity payments begin, no transfers may be made to or from the Fixed Account, but transfers may be made once per Contract year among the Subaccounts.

8. The Existing Contracts provide that if the Contract owner or the annuitant dies (or, for qualified annuities, if the annuitant dies) before annuity payments begin, IDS Life will pay the beneficiary a death benefit as follows:

(a) If death occurs before the 75th birthday of the owner or the annuitant, the beneficiary receives the greater of:

- (1) The Contract value,
- (2) The Contract value as of the most recent sixth Contract anniversary, minus any surrenders since that anniversary, or

(3) Purchase payments, minus any surrenders; or

(b) If death occurs on or after the owner's or annuitant's 75th birthday, the beneficiary receives the greater of:

- (1) The Contract value, or
- (2) The Contract value as of the most recent sixth Contract anniversary, minus any surrenders since that anniversary.

9. IDS Life will assess an annual Contract administrative charge