

stakeholder concerns such that further stakeholder involvement before the Commission's concurrence on part 963 is not necessary.

Dated this 19th day of October, 2001, at Rockville, Maryland.

For the Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01-26946 Filed 10-25-01; 8:45 am]

BILLING CODE 7590-01-P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Board Votes To Close October 22, 2001, Meeting

By telephone vote on October 22, 2001, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Board determined that prior public notice was not possible.

ITEM CONSIDERED: 1. Emergency Capital Funding—Hazardous Materials.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, David G. Hunter, at (202) 268-4800.

David G. Hunter,

Secretary.

[FR Doc. 01-27175 Filed 10-24-01; 2:28 am]

BILLING CODE 7710-12-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 10:30 a.m., Monday, November 5, 2001; 3:30 p.m., Monday, November 5, 2001.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 5—10:30 a.m. (Closed); November 5—3:30 p.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, November 5—10:30 a.m. (Closed).

1. Financial Performance.
2. Strategic Planning.

3. Personnel Matters and Compensation Issues.

Monday, November 5—3:30 p.m. (Open)

1. Minutes of the Previous Meeting, October 1-2, 2001.
2. Remarks of the Postmaster General and CEO.
3. Tentative Agenda for the December 3-4, 2001, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION:

David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000. Telephone (202) 268-4800.

David G. Hunter,

Secretary.

[FR Doc. 01-27176 Filed 10-24-01; 2:28 pm]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25217; 812-11592]

Evergreen Select Fixed Income Trust, *et al.*; Notice of Application

October 22, 2001.

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

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act") under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(f) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: Evergreen Selected Fixed Income Trust; Evergreen Select Equity Trust; Evergreen Select Money Market Trust; Evergreen Municipal Trust; Evergreen Equity Trust; Evergreen Fixed Income Trust; Evergreen International Trust; Evergreen Money Market Trust; Evergreen Variable Annuity Trust (collectively, the "Evergreen Trusts"); Evergreen Investment Management Company, LLC ("Evergreen"); any person controlling, controlled by or under common control with Evergreen (together with Evergreen, an "Evergreen Adviser"); any other open-end management investment company and

its series registered under the Act for which an Evergreen Adviser serves as investment adviser ("Future Trusts" and together with the Evergreen Trusts, the "Trusts").¹

FILING DATES: The application was filed on April 22, 1999, and amended on August 1, 2001. Applicants have agreed to file another amendment during the notice period, the substance of which is reflected in this notice.

Notice or Notification 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 November 16, 2001 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609; Applicants: Catherine Foley, Esq., Wachovia Corporation, c/o Evergreen Funds, 200 Berkeley Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942-0646, or Nadya B. Roytblat, Assistant Director, at (202) 945-0564 (Division of Investment Management, Office of Investment Company Regulation).

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).

Applicant's Representations

1. Each Evergreen Trust is registered under the Act as an open-end management investment company and is organized as a Delaware business trust. Currently, there are nine Evergreen Trusts comprised of one hundred and five series (together with the series of the Future Trusts, the "Funds"). Evergreen, a subsidiary of Wachovia Corporation ("Wachovia"),

¹ All Trusts that currently intend to rely on the order are named as applicants, and any other Trust that subsequently relies on the order will comply with the terms and conditions of the application.

and each of the Evergreen Advisers, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Each Evergreen Trust has entered into an investment advisory agreement with an Evergreen Adviser. Evergreen Investment Services, Inc. serves as administrator for the Funds.

2. The Funds and the Evergreen Advisers have obtained an order under section 17(d) and rule 17d-1 permitting the Funds to deposit uninvested cash balances that remain at the end of a trading day in one or more joint trading accounts (each a "Joint Account") to be used to enter into short-term investments.² The Funds and their advisers have also obtained an order permitting the Funds to invest their cash balance in one or more of the Funds that are money market funds that comply with rule 2a-7 of the Act (the "Money Market Funds").³

3. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments, either directly or through the Joint Account. Other Funds may borrow money from the same or similar banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a security sold by a Fund has been delayed. Currently, the Funds have credit arrangements with their custodians (*i.e.*, overdraft protection) under which the custodians may, but are not obligated to, lend money to the Funds to meet the Funds' temporary cash needs.

4. If the Funds were to borrow money from their custodians under their current arrangements or under other credit facility arrangements with a bank, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

5. Applicants request an order that would permit the Trusts, on behalf of the Funds, to enter into lending agreements ("Interfund Lending Agreements") under which the Funds would lend money and borrow money for temporary purposes directly to and from each other through a credit facility ("Interfund Loan"). Applicants believe that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their customers.

6. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are affected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. Applications also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experience a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

8. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash through the Joint Account in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

9. The interest rate charged to the Funds on any Interfund Loan (the "Interfund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate," both as defined below. The Repo Rate for any day would be the highest rate available from investments in overnight repurchase agreements through the Joint Account. The Bank Loan Rate for any day would be calculated by an Evergreen Adviser each day an Interfund Loan is made according to a formula established by the Board of Trustees for each Trust (the "Trustees") designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds plus 25 basic points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Trustees periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Trustees.

10. The credit facility would be administered by an Evergreen Adviser's money market investment professionals (including the portfolio manager for the Money Market Funds) and fund accounting department (collectively, the "Cash Management Team"). Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. The Evergreen Adviser on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further

² Investment Company Act Release Nos. 19827 (Nov. 1, 1993) (notice) and 19908 (Nov. 29, 1993) (order).

³ Investment Company Act Release Nos. 24213 (Dec. 21, 1999) (notice) and 24260 (Jan. 24, 2000) (order).

communication from portfolio managers (other than the Money Market Fund portfolio managers on the Cash Management Team). Applicants expect far more available uninvested cash each day than borrowing demand. All allocations will require the approval of at least one member of the Cash Management Team who is not a Money Market Fund portfolio manager. After allocating cash for Interfund Loans, the Evergreen Adviser will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio managers of the Money Market Funds. The Money Market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

11. The Cash Management Team will allocate borrowing demand and cash available for lending among the Funds on what the Cash Management Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by the Trustees on behalf of each Fund, including a majority of Trustees who are not "interested persons" of the Funds, as defined in section 2(a)(19) of the Act ("Independent Trustees"), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. The Evergreen Adviser would (a) monitor the Interfund Loan Rate and the other terms and conditions of the loans, (b) ensure compliance with each Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Trustees concerning any transactions by the Funds under the credit facility and the Interfund Loan Rate charged in the transactions.

13. The Evergreen Adviser would administer the credit facility as part of its duties under its existing investment advisory agreement with each Fund and would receive no additional fee as compensation for its services. Wachovia or companies affiliated with it may collect standard pricing and bookkeeping fees applicable to repurchase and lending transactions generally, including transactions

effected through the credit facility. Fees would be no higher than those applicable for comparable loan transactions.

14. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment policies and limitations. The prospectus of each Fund discloses that the Fund may borrow money and lend portfolio securities. The Statement of Additional Information ("SAI") of each Fund discloses that the Fund may borrow money in the amount of 33 $\frac{1}{3}$ % of its total assets, and that the Fund may also borrow up to an additional 5% of its assets from banks or others. Each Fund, including the Money Market Funds, may also mortgage or pledge their securities with the same restrictions as the borrowing policy. As a fundamental policy, each Fund may lend securities or other assets if, as a result, no more than 33 $\frac{1}{3}$ % of its total assets would be lent to other parties.

15. Prior to establishing the credit facility, the Trustees will solicit a shareholder vote allowing certain approved Funds to lend money, within the lending limitations set forth in the application. The SAI of each Fund participating in the interfund lending arrangements will disclose all material facts about the Fund's intended participation in the credit facility.

16. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(j) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having an Evergreen

Adviser as their common investment adviser.

2. Section 6(c) provides that an exemptive order may be granted where an 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 Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (a) an Evergreen Adviser would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through the Joint Account or in the Money Market Funds; (c) the Interfund Loans would not involve a greater risk than other similar investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property

to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(f) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(f) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that the Evergreen Adviser would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided that, immediately after the borrowing, there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting the relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other

Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d-1 generally prohibit any affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d-1 provides that in passing upon applications for exemptive relief, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies, and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

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

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Evergreen Adviser will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate; (b) more favorable to the lending Fund than the yield on the Money Market Funds ("MMF Yield") (for those Funds that invest in the Money Market Funds); and (c) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank

loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, the event of that default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such a call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including, but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would exceed the limits imposed by section 18 of the Act.

5. Before any Fund that has outstanding interfund borrowing may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all of its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral

with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 will no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of collateral to market each day and will pledge such additional collateral as is necessary to maintain market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No equity, taxable bond or Money Market Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 5%, 7.5% or 10% respectively, of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund will not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds (except any portfolio manager of the Money Market Funds acting in her or his capacity as a member of the Cash Management Team). All allocations will require the approval of at least one member of the Cash Management Team who is not a Money Market Fund portfolio manager. The Cash Management Team will not solicit cash for the credit facility from

any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the portfolio manager of the Money Market Funds has access to loan demand data). The Evergreen Adviser will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio manager of the Money Market Funds.

13. An Evergreen Adviser will monitor the Interfund Loan Rates charged and the other terms and conditions of the Interfund Loans and will make quarterly reports to the Trustees concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. The Trustees, on behalf of each Fund, including a majority of the Independent Trustees will: (a) Review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) establish the Bank Loan Rate formula used to determine the Interfund Loan Rate and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Evergreen Adviser will promptly refer such a loan for arbitration to an independent arbitrator selected by the Trustees on behalf of any Fund involved in the loan who will also serve as arbitrator of disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the

transaction, including the amount and maturity of the loan, the Interfund Loan Rate, the rate of interest available at the time on short-term repurchase agreements, commercial bank borrowings, the MMF Yield and such other information presented to the Trustees in connection with the review required by conditions 13 and 14.

17. The Evergreen Adviser will prepare and submit to the Trustees for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all the Funds are treated fairly. After the commencement of the operations of the credit facility, Evergreen will report on the operations of the credit facility at the Trustees' quarterly meetings.

In addition, for two years following the commencement of the use of the credit facility, the independent public accountant for each Fund will prepare an annual report that evaluates Evergreen's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report will be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it will be filed pursuant to item 77Q3 of Form N-SAR. In particular, the report will address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, and the MMF Yield, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with the procedures established by the Trustees; and (e) that the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N-SAR.

18. No Fund will participate in the credit facility unless it has fully disclosed in its SAJ all material facts about its intended participation.

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]

BILLING CODE 8010-01-M

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