

**II**

It is stated in 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

By letter dated June 19, 1997, the licensee requested three exemptions from certain requirements of 10 CFR 73.55. Specifically, two of these exemptions are being granted at this time as follows: (1) 10 CFR 73.55(c)(1)—devitalization of vital areas and (2) 10 CFR 73.55(h)(3)—reduction of the security shift staffing. The proposed exemption is a preliminary step toward enabling CYAPCO to revise the Haddam Neck Security Plan under 10 CFR 50.54(p) to implement a defueled security plan that was developed to protect against radiological sabotage at a permanently shutdown reactor facility with all fuel stored in the spent fuel storage pool.

**III**

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. The Code of Federal Regulations at 10 CFR 73.55 allows the Commission to authorize a licensee to provide alternative measures for protection against radiological sabotage, as long as the licensee demonstrates that the proposed measures meet the general performance requirements of the regulation and that the overall level of system performance provides protection against radiological sabotage equivalent to that stated in the regulation.

The underlying purpose of 10 CFR 73.55 is to give reasonable assurance that adequate security measures can be taken in the event of an act of radiological sabotage. Because of its permanently shutdown and defueled condition, HNP presents a reduced radiological risk from that posed by an operating unit. With more than 500 days of radiological and heat decay since the plant was shut down on July 22, 1996, the potential source term of gaseous and

volatile radionuclides associated with the remaining design-basis accidents and radiological sabotage has decreased substantially.

**IV**

For the foregoing reasons, the Commission has determined that the proposed alternative measures for protection against radiological sabotage meet the assurance objective and general performance requirements of 10 CFR 73.55 for a permanently shut-down reactor site that has placed all of its fuel in the spent fuel pool. In addition, the staff has determined that the overall level of the proposed system's performance, as limited by this exemption, would not result in a reduction in the physical protection capabilities for the protection of special nuclear material or of the HNP facility. Specifically, a limited exemption is being granted for two specific areas in which the licensee is authorized to modify the existing security plan commitments commensurate with the security threats associated with a permanently shutdown and defueled site: (1) devitalization of vital areas and (2) reduction of security shift staffing.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants CYAPCO a limited exemption as described above from those requirements of 10 CFR 73.55 at HNP in its permanently defueled condition.

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant effect on the quality of the human environment (63 FR 36969, July 8, 1998).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 15th day of July 1998.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

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**POSTAL RATE COMMISSION**

[Docket No. MC98-1; Order No. 1216]

**Mail Classification Proceeding**

(Authority: 39 U.S.C. 3623)

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and Order Concerning Request for Experimental Online Mailing Service and Fees, including Market Test.

**SUMMARY:** This notice and order addresses legal and administrative matters related to the Postal Service's request for expedited consideration of an experimental mail classification and fee schedule for an online mailing special service. The Service proposes that a market test of the proposed service precede introduction. The proposed duration of the experiment is 2 years.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for dates.

**ADDRESSES:** SEE **SUPPLEMENTARY INFORMATION** section for address to which communications concerning this notice and order should be sent.

**FOR MORE INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 1333 H St., NW, Washington, DC 20268-0001, 202-789-6820.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on July 15, 1998, the United States Postal Service filed a Request with the Postal Rate Commission pursuant to sec. 3623 of the Postal Reorganization Act, 39 U.S.C. 101 *et seq.*, for a recommended decision on proposed additions to the Domestic Mail Classification Schedule (DMCS) on an experimental basis. The request also incorporates a proposal for the establishment of associated new fees. The request includes attachments and is supported by the testimony of eight witnesses and four library references. It is on file in the Commission docket room and is available for inspection during the Commission's regular business hours. For interested persons who have access to the internet, the request and related documents are available on the Commission's home page at <http://www.prc.gov/wsdocs/MC98-1/MC98-1.htm>.

**Proposed market test preceding establishment of experimental mail classification and fees.**

The Postal Service indicates that it desires to conduct a market test of the proposed online mailing service prior to its introduction as an experimental mail classification. The Service proposes to conclude a current operations test<sup>1</sup> and

<sup>1</sup> According to the request, the Postal Service currently is conducting an operations test of the proposed Mailing Online service with one postal web server, one printer contractor, and a maximum of 200 customers located in Tampa, FL and Hartford, CT. Test customers currently pay the single-piece First-Class rate for mailing, but no additional fee for production of the mailpiece entered into the postal system. Request at 2.

begin a more extensive market test of the service, at interim fees to be recommended by the Commission, in early September of this year. Postal Service Request at 2-3.

Under the Service's proposal, the market test would be conducted while the Commission considers its request to establish Mailing Online as an experimental service. The interim market test fees would remain in effect pending the Commission's issuance of a recommended decision on the proposed experimental mail classification, and would expire upon implementation of the requested experimental service, or within 3 months of a decision rejecting the latter proposal. In a separate motion filed by the Postal Service, which is described in more detail below, the Service states that its "preferred objective for this experiment is to have it recommended by the Commission by the end of November, 1998."<sup>2</sup> In the event the Commission recommends the experimental classification and associated fees, the Service anticipates that they will be implemented together with the new rates and fees that the Governors of the Postal Service have resolved to put into effect on January 10, 1999, in connection with Docket No. R97-1. The Service proposes that the experimental service have a duration of 2 years.

#### *Description of Request*

The proposed Mailing Online service would enable individuals and organizations with access to a personal computer and an internet connection to transmit documents created on their computers to the Postal Service in digital form for printing and entry as mail, paying online in a single transaction. Users would transmit digital document files generated in any of several selected word processing and desktop publishing applications, together with recipient information and other data, to a designated Postal Service site on the world wide web. The Service would offer users a number of choices regarding printing and finishing specifications, customization of output by recipient variables in the user's database, and scheduling of a specific mailing date.

Users of the proposed Mailing Online service would be charged existing postage rates for mailing, plus a fee for production and other pre-mailing services. Depending upon the character of the material being sent and the user's

service preference, mail pieces generated by the Mailing Online service would be charged postage at either the First-Class or standard mail automation basic rates applicable to the finished mail piece.<sup>3</sup>

In lieu of specific unit fees for the Mailing Online special service, the Postal Service proposes what might be described as a "cost plus" approach to fee calculation. For the duration of the market test, the Service proposes that fee elements be set at the unit contract cost of the respective service feature to the Postal Service, multiplied by a factor of 1.25 to provide a resulting cost coverage of 125 percent. According to the Service, these various costs will be established in the Mailing Online printer contract to be awarded during August 1998. For the subsequent experimental service phase, the Service proposes fees to be calculated by multiplying the sum of printer contractual costs for the particular mailing<sup>4</sup> by the same 125 percent cost coverage, then adding 0.1 cent per impression to recover other Postal Service costs. Postal Service Request, Attachment B1, page 2; Attachment B2, page 1.

#### *Expedited Consideration of the Request*

The Service's request invokes the operation of two independent portions of the Commission's rules of practice and procedure which provide for expedited consideration of requests for particular types of mail classification changes. The first of these, encompassing rules 67 through 67d (39 CFR 3001.67 through 3001.67d), applies to requests for new services or mail classification changes that are experimental in character. These rules provide for the adoption of streamlined procedures for considering such requests, and require participants to identify the genuine issues of material fact raised by the Postal Service proposal in order to limit formal hearings to those issues. 39 CFR 3001.67a. They also provide for establishment of a procedural schedule that will allow issuance of a recommended decision within 150 days

<sup>3</sup> In addition to offering Mailing Online users the opportunity to use First-Class Mail or standard mail regular rates, a witness for the Postal Service states in part of its pre-filed testimony that the Service is developing a means for verifying the eligibility of mailers with standard nonprofit permits, so that they may use the service to mail at standard nonprofit rates.

<sup>4</sup> The Postal Service anticipates that printing costs may vary substantially by region because of differing levels of labor and real estate costs. Thus, a Mailing Online user whose documents are sent to a printing site located in a higher-cost area would likely pay higher fees than if the same services were performed by a printer in a lower-cost area.

from any favorable determination the Commission may make as to the propriety of treating the Postal Service proposal as experimental. 39 CFR 3001.67d.

In connection with the proposed interim market test, the Postal Service also invokes the operation of subpart I of the rules of practice, 39 CFR 3001.161 through 3001.166. The purpose of these expedited procedures, as stated in 39 CFR 3001.164, "is to allow for consideration of proposed market tests within 90 days, consistent with the procedural due process rights of interested persons." Section 3001.163(e) requires any participant who wishes to dispute a genuine issue of material fact presented by the Service's request to identify facts it will controvert with specificity, and provides for formal hearings only when the Commission determines that there is a genuine and material factual issue to be resolved, and that a hearing is needed for that purpose.

According to the Service, its request is suitable for consideration under both the experimental service and market test rules. Mailing Online service qualifies for consideration under the market test rules, the Service states, because the proposed test would be modest in scope, scale, duration, and potential impact, and because it is being conducted "as a stepping stone to a more permanent service offering." Request at 5. (Footnote omitted.) The proposed service also qualifies for consideration as an experiment, the Service submits, in view of its novelty as an electronic means of presenting documents for entry into the mail; the modest anticipated magnitude of its impact upon postal costs and revenues, and the mailing costs and practices of mail users; the need to gather information suitable for supporting a request for a permanent mail classification change; and the desirability of a two-year experiment to generate cost and volume information, as well as to demonstrate the viability of the service. *Id.* at 6-7.

In a separate notice dated July 15, 1998, a copy of which was filed with its request, the Postal Service certifies that it has complied with the early notification requirement specified for requested market tests in 39 CFR 3001.163(d).

#### *Motion for Expedition and Waiver of Certain Provisions*

The Postal Service's request was also accompanied by a pleading captioned, "Motion of the United States Postal Service for expedition, and for waiver of certain provisions of rule 161 and

<sup>2</sup> Motion of the United States Postal Service for expedition and for waiver of certain provisions of rule 161 and certain provisions of rule 64(h), July 15, 1998, at 1.

certain provisions of rule 64(h).” In this pleading, the Service asks the Commission to accelerate the expedited consideration of its request provided by the experimental service rules to achieve the Postal Service’s preferred objective of issuance of a decision by the end of November 1998. According to the Service, the accelerated procedural schedule it seeks is required to allow it “to explore the possibility that major software developers could integrate Mailing Online into impending updates of software in order to make the service widely and easily available to individual, small-office, and home-office mailers.” Motion at 2. Additionally, the Service notes, a Commission decision no later than the end of November would accommodate the Service’s planned deployment schedule that calls for nationwide customer access to Mailing Online service in January 1999. *Ibid.*

The Service’s motion also requests that portions of Commission rules 161 and 64(h) be waived in this case. To the extent that rule 161(a) could be read to require the filing of a contemporaneous request for a permanent classification change as a prerequisite for a market test, the Postal Service requests a waiver of that requirement so that it may go forward with the market test at interim fees to be recommended by the Commission. *Id.* at 2–3. Pursuant to rule 64(h)(3), the Service also asks to be relieved of the obligation to produce certain information regarding cost and revenue effects of its proposal, on the grounds that its proposal would not change any existing rates or fee, or produce a significant impact upon the cost-revenue relationships of existing postal services. *Id.* at 5–7. Specifically, the Service seeks waiver of rules 54(b)(3) in part, 54(f)(2), 54(f)(3), 54(h), 54(j), and 54(l) in part. *Id.* at 8–9.

#### Further Procedures; Filing Address

Rule 163(b) provides that interested persons may intervene in proceedings to consider Postal Service requests to conduct a market test within 28 days after the Service’s filing. Accordingly, anyone wishing to be heard in this matter is directed to file a written notice of intervention with Margaret P. Crenshaw, secretary of the Commission, 1333 H Street NW, Suite 300, Washington, DC 20268–0001, on or before August 12, 1998. Intended participants should indicate whether they request formal intervention or limited participator status. See 39 CFR 3001.20 and 3001.20a.

Rule 163(e) [39 CFR 3001.163(e)] states that the Commission will hold hearings on a Postal Service request for

a market test “when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.” To assist that determination, the same subsection directs parties who wish to dispute a genuine issue of material fact to file a request for a hearing, which:

shall state with specificity the fact or facts set forth in the Postal Service’s filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

*Ibid.*

Any participant who wishes to dispute a genuine issue of material fact to be resolved with regard to the Postal Service’s proposed market test in this proceeding shall file a request for a hearing as specified in rule 163(e) by August 12, 1998. In order to assist the Commission’s determination of whether a hearing is necessary, should any written discovery be directed to the Postal Service by a participant before August 12, 1997, the Postal Service shall respond within 10 days.

With regard to the Service’s longer-term request to establish Mailing Online service as an experimental mail classification, rule 67(c) provides that the Commission will entertain representations by participants that the proposal should not be considered as an experiment, and should follow the normal mail classification change procedures. Any participant intending to make such a representation shall do so by pleading no later than August 12, 1998.

In addition, rule 67a(b) requires parties to proceedings in which the Postal Service seeks a classification change it denominates as experimental in character to file statements of the issues they perceive in the case at the earliest possible time following the filing of the Service’s request, or following a determination that the proposed change is experimental in character. In view of the Service’s motion for extraordinarily expeditious consideration of its proposal, participants’ statements of issues shall also be due no later than August 12, 1998.

A prehearing conference will be held in this proceeding on Friday, August 14, 1998, at 9:30 a.m. in the Commission’s hearing room. Participants should be prepared to discuss what formal procedures, including hearings, may be necessary and appropriate in this docket. In addressing the issue of appropriate procedures in this docket, participants should also be prepared to address the potentially different

procedural requirements presented by the Postal Service’s market test proposal and its request for establishment of Mailing Online as an experimental service. If the Commission determines that formal hearings to resolve genuine issues of material fact are required for either or both, hearings to evaluate the supporting evidence presented by the Postal Service may be scheduled to begin as soon as August 26, 1998. The presiding officer will establish subsequent procedural dates.

#### Representation of the General Public

In conformance with 39 U.S.C. 3624(a), the Commission designates W. Gail Willette, acting Director of the Commission’s office of the consumer advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Willette will direct the activities of Commission personnel assigned to assist her and, when requested, will supply their names for the record. Neither Ms. Willette nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and contemporaneous with, service on the Commission of the 24 copies required by rule 10(c) (39 CFR 3001.10(c)).

It is ordered:

1. The Commission will sit en banc in this proceeding.
2. Notices of intervention shall be filed no later than August 12, 1998.
3. Participants who wish to request a hearing on the Postal Service’s request in this docket to conduct a market test shall submit such a request, together with statements in conformance with 39 CFR 3001.163(e), no later than August 12, 1998.
4. Statements of issues presented by the Postal Service’s request in this docket to establish a Mailing Online experimental mail classification in conformance with 39 CFR 3001.67a(b) shall be filed no later than August 12, 1998.
5. Answers to the Postal Service’s motion for expedition and for waiver of certain provisions of rule 161 and certain provisions of rule 64(h) are to be submitted no later than August 12, 1998.
6. The Postal Service shall provide, within 10 days, responses to any written discovery requests submitted to it before August 12, 1998.
7. W. Gail Willette, acting director of the Commission’s OCA, is designated to represent the general public.

8. A prehearing conference in this docket shall be held on Friday, August 14, 1998, at 9:30 a.m. in the Commission's hearing room.

9. The Secretary shall cause this notice and order to be published in the **Federal Register**.

Dated: July 20, 1998.

By the Commission.

**Cyril J. Pittack,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23317; File No. 812-10896]

### Equitable Life Insurance Company of Iowa, et al.; Notice of Application

July 16, 1998.

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

**ACTION:** Notice of application for an order of approval pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") and an order granting exemptive relief pursuant to Section 17(b) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order pursuant to Section 26(b) of the 1940 Act approving the substitution of shares of certain portfolios of the GCG Trust for shares of certain portfolios of the ESS Trust. Applicants also seek an order, pursuant to Section 17(b) of the 1940 Act, granting exemptions from Section 17(a) to permit Applicants to carry out the substitutions by means of in-kind redemption and purchase transactions, and to permit Applicants to combine certain subaccounts holding shares of the same substitute fund after the substitutions.

**APPLICANTS:** Equitable Life Insurance Company of Iowa ("Equitable"), Equitable Life Insurance Company of Iowa Separate Account A ("Equitable Separate Account A"), Golden American Life Insurance Company ("Golden American"), Golden American Life Insurance Company Separate Account A ("Golden American Separate Account A"), Golden American Life Insurance Company Separate Account B ("Golden American Separate Account B"), First Golden American Life Insurance Company of New York ("First Golden"), First Golden American Life Insurance Company of New York Separate Account NY-B ("First Golden Separate Account NY-B"), The GCG Trust ("GCG Trust"), and the Equi-

Select Series Trust ("ESS Trust") (collectively, "Applicants").

**FILING DATES:** The application was filed on December 15, 1997, and amended and restated on March 18, 1998, and July 2, 1998.

**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 SEC'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 August 10, 1998, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing request 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 SEC's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, Marilyn Talman, Esquire, Golden American Life Insurance Company, 1001 Jefferson Street, Suite 400, Wilmington, DE 19801.

**FOR FURTHER INFORMATION CONTACT:** Megan Dunphy, Attorney, or Mark C. Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

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

### Applicants' Representations

1. Equitable and Golden American are stock life insurance companies organized under the insurance laws of Iowa and Delaware, respectively. Each is authorized to write variable annuity and variable life insurance policies in at least 48 states and the District of Columbia. First Golden is a stock life insurance company organized under the insurance laws of the state of New York, and is authorized to write variable annuity contracts in New York. Equitable, Golden American and First Golden (collectively, "Applicant Insurance Companies") are indirect wholly owned subsidiaries of ING Groep, N.V. ("ING"), a global financial services holding company.

2. Equitable Separate Account A, Golden American Separate Account A, Golden American Separate Account B

and First Golden Separate Account NY-B (collectively "Applicant Separate Accounts") are separate accounts for which one of the Applicant Insurance Companies serves as the sponsor and depositor. Equitable serves as sponsor and depositor of Equitable Separate Account A; Golden American serves as sponsor and depositor of Golden American Separate Account A and Golden American Separate Account B; First Golden serves as the sponsor and depositor of First Golden Separate Account NY-B. Each Applicant Separate Account is a segregated asset account of its insurance company sponsor and each is registered under the 1940 Act as a unit investment trust.

3. Each Applicant Separate Account serves as a funding vehicle for certain variable annuity or variable life insurance contracts (collectively, "Variable Contracts") issued by the Applicant Insurance Company of which it is a part. Applicant Separate Accounts are divided into separate subaccounts, each dedicated to owning shares of a designated investment portfolio of either the GCG Trust (the "GCG Subaccounts") or the ESS Trust ("ESS Subaccounts"). Holders of any Variable Contracts ("Contractholders") may select one or more of the investment options available under the Variable Contract held by allocating premiums payable under such contract to that subaccount of the relevant Applicant Separate Account that corresponds to the investment option desired.

4. The ESS Trust is registered under the 1940 Act as an open-end, management, services investment company and currently offers nine investment portfolios. Of these portfolios, five—Growth & Income, OTC, Total Return, Value+Growth and Research Portfolios—invest primarily in equity securities. The remaining portfolios—Advantage, Mortgage-Backed Securities, International Fixed Income and Money Market Portfolios—invest primarily in fixed income securities. Overall management services are provided to the ESS Trust and each of its individual series by Directed Services, Inc. ("DSI"), an indirect, wholly owned subsidiary of ING. DSI is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act") and a broker-dealer registered under the Securities Exchange Act of 1934.

5. The GCG Trust is registered under the 1940 Act as an open-end, management, series investment company. The GCG Trust offers shares of twenty two separate investment series, including six new investment series created in anticipation of the