

the Money Pool under the same terms and conditions established in the Prior Order. Further, Applicants request authority for all newly formed or acquired or currently non-participating National Grid subsidiary companies (including EWGs and FUCOs, but excluding ETCs) to participate in the Money Pool as lenders only.

IV. Other Requests

As mentioned above, the purchase method of accounting would apply to the Merger. Consequently, the current retained earnings of NiMo and its subsidiaries, the traditional source of dividend payment, would be eliminated and the value of the goodwill would be reflected in their balance sheets as additional paid-in-capital. Applicants request authority for Niagara Mohawk to pay dividends or to acquire, retire or redeem its securities using its capital or unearned surplus as follows: Niagara Mohawk would in any calendar year, limit dividends paid on its common stock to "income available for common dividends"⁴⁵ plus a fixed amount per calendar year.⁴⁶ To the extent that Niagara Mohawk does not pay the maximum dividends allowable, the company would carry the balance forward to subsequent years. Applicants also request authority for NiMo and its nonutility subsidiaries to pay dividends or to acquire, retire or redeem their securities without restriction, to the extent permitted under applicable state and corporate law or applicable financing covenants. Accordingly, Applicants request that the Commission eliminate the restriction established by the Prior Order limiting the payment of dividends by the Utility Subsidiaries to eighty percent of their post-New England Electric System merger earnings before the amortization of goodwill, based on a rolling five-year average.

Applicants request authority to amend the National Grid USA tax allocation agreement, previously approved by the Commission,⁴⁷ to add NiMo and its subsidiaries as members, allowing National Grid General Partnership ("NGGP") to retain the value of the tax deduction associated

⁴⁵ To calculate "income available for dividends," Applicants would add back amounts attributable to the write down of goodwill so that income available for dividends would reflect Niagara Mohawk's income before the deduction for goodwill impairment.

⁴⁶ Applicants propose the following fixed amounts: \$100 million during 2001; \$100 million during 2002; \$80 million during 2003; and \$60 million during 2004.

⁴⁷ See Prior Order.

with the debt incurred by New National Grid to finance the Merger.

Applicants request authority for NiMo and its wholly owned subsidiaries to increase the amount or change the terms of the authorized capital securities without further Commission approval.⁴⁸ The terms that may be changed include dividend rates, conversion rates and dates, and expiration dates. The changes to capital stock would affect only the manner in which financing is conducted by those companies; the terms of limits proposed by this application or prior Commission orders would not be altered.

Applicants request authorization for NiMo and its subsidiaries to acquire financing entities to facilitate financings by issuing to third parties income preferred securities or other authorized or exempt securities.⁴⁹ Amounts issued by these financing entities to third parties under the Commission's authorization would count against any applicable limits for the immediate parent of that financing entity, but the underlying intrasystem mirror debt and parent guarantee would not count against any financing or guarantee limits.

By the Prior Order, the Commission authorized National Grid to invest up to \$4.406 billion in EWGs and FUCOs through May 31, 2003. Applicants request authority for New National Grid to increase its investments in EWGs and FUCOs through the Authorization Period to no more than \$5.406 billion of its retained earnings.

Applicants request authority for NiMo and its subsidiaries to enter into service agreements with National Grid USA Service Company ("Service Company"), the current service company for the National Grid USA and its subsidiaries (collectively, "National Grid USA Group"), and receive the same services that current members of the National Grid Group receive from Service Company. This affiliate service relationship would follow in all material respects the authority granted in the Prior Order. Applicants state that Service Company would continue to be operated in accordance with the policies and procedures manual previously filed, and the service agreements entered into between Service Company and NiMo

⁴⁸ By the Prior Order, the Commission authorized National Grid USA, its subsidiaries and the Intermediate Holding Companies, to increase the amount or change the terms of their authorized capital securities without additional Commission approval.

⁴⁹ By the Prior Order, the Commission authorized National Grid, the Intermediate Holding Companies, National Grid USA, and its subsidiaries to organize these types of financing entities.

and its subsidiaries would be in the same form as those entered into by the current National Grid USA Group.

Applicants request authority for New National Grid to acquire, directly or indirectly, the equity securities of one or more intermediate subsidiaries ("Intermediate Subsidiaries") organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future Nonutility Subsidiaries. Intermediate Subsidiaries may also provide management, administrative, project development, and operating services to such entities.⁵⁰ To the extent their provision of those services is not authorized or permitted by rule, regulation, or order of the Commission, applicants request authority for the Intermediate Subsidiaries to contract to provide them.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-25247; File No. 812-12584]

Golden American Life Insurance Company, et al.

October 30, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "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) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

⁵⁰ "Development Activities" would be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses. "Administrative Activities" would include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage New National Grid's investments in Nonutility Subsidiaries.

Applicants: Golden American Life Insurance Company ("Golden American"), Separate Account B of Golden American Life Insurance Company (the "Account"), and Directed Services, Inc. ("DSI") (together, the "Applicants").

SUMMARY OF THE APPLICATION:

Applicants seek an order of the Commission, pursuant to Section 6(c) of the Act to the extent necessary to permit the recapture of certain credits applied to premium payments made in consideration of deferred variable annuity contracts which Golden American intends to issue (the "Contracts") and substantially similar variable annuity contracts that Golden American may issue in the future ("Future Contracts"), as well as any other separate accounts of Golden American and its successors in interest ("Future Accounts") that support in the future variable annuity contracts that are similar in all material respects to the Contracts and principal underwriters of such contracts ("Future Underwriters").

FILING DATE: The application was filed on July 19, 2001, and amended and restated on October 11, 2001, and October 29, 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 the 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 23, 2001, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Applicant, c/o Linda Senker, Esq., Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380. Copies to Stephen E. Roth, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004-2415.

FOR FURTHER INFORMATION CONTACT:

Curtis A. Young, Esq., Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

Applicants' Representations

1. Golden American is a stock life insurance company originally incorporated under the laws of Minnesota on January 2, 1973, and later redomiciled in Delaware. Golden American is engaged in the business of writing annuities, both individual and group, in all states (except New York) and the District of Columbia. Golden American is a subsidiary of Equitable of Iowa Companies, Inc. ("Equitable of Iowa"). Golden American is ultimately controlled by ING Groep N.V., a global financial services holding company.

2. Golden American established the Account as a segregated investment account under Delaware law. The assets of the Account attributable to the Contracts and any other variable annuity contracts through which interests in the Account are issued are owned by Golden American but are held separately from all other assets of Golden American, for the benefit of the owners of, and the persons entitled to payment under, Contracts issued through the Account. Consequently, such assets are not chargeable with liabilities arising out of any other business that Golden American may conduct. Income, gains and losses, realized or unrealized, from each subaccount of the Account, are credited to or charged against that subaccount without regard to any other income, gains or losses of Golden American. The Account is a "separate account" as defined by Rule 0-1(e) under the Act, and is registered with the Commission as a unit investment trust.

3. The Account currently is divided into a number of subaccounts. Each subaccounts invests exclusively in shares representing an interest in a separate corresponding investment portfolio of one of several series-type open-end management investment companies. The assets of the Account support one or more varieties of variable annuity contracts, including the Contracts.

4. Golden American established the Account on July 14, 1988. The Account is registered with the Commission as a unit investment trust and interests in the Account offered through the Contracts have been registered under the Securities Act of 1933 on Form N-4.

5. DSI is a wholly-owned subsidiary of Equitable of Iowa. It serves as the principal underwriter of Golden American separate accounts registered as unit investment trusts under the Act, including the Account, and is the distributor of the variable life insurance contracts and variable annuity contracts issued through such separate accounts, including the Contracts. DSI is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (the "NASD").

6. The Contracts make available a number of subaccounts of the Account to which owners may allocate net premium payments and associated bonus credits (described below) and to which owners may transfer contract value. The Contracts also offer fixed-interest allocation options under which Golden American credits guaranteed rates of interest for various periods (including interest crediting mechanisms which entail the imposition of "market value" adjustments under certain circumstances). Transfers of contracts value among and between the subaccounts and, subject to certain restrictions, among and between the subaccounts and the fixed-interest options, may be made at any time from the end of the free look period until the annuity start date. The Contracts offer a variety of fixed and variable annuity payment options to owners. In the event of an owner's death prior to the annuity commencement date, beneficiaries may elect to receive death benefits in the form of one of the annuity payment options instead of a lump sum.

7. Upon application to purchase the Contract, a purchaser would select from among three option packages, Option Package I, II, or III. Each option package determines the minimum initial premium payment required to purchase the Contract, the maximum age at which a purchaser would be able to purchase the Contract, the free withdrawal amount, and the death benefit options available under the Contract. The minimum initial premium of the Contract is \$15,000 (\$1,500 for certain employee benefit plans) under Option Package I and \$5,000 (\$1,500 for certain employee benefit plans) under Option Packages II and III. The Contracts provide for an annual administrative charge of \$30 that Golden American deducts on each Contracts Anniversary and upon a full surrender of a Contract, a daily asset-based administrative charge deducted at an annual rate of 0.15%, along with a daily mortality and expense risk charge deducted from the assets of the Account at annual rates of

1.45% for Option Package I, 1.65% for Option Package II, and 1.80% for Option Package III, of the Account's average daily net assets. The charge for the death benefit is included in the mortality and expense risk charge. The Contract also includes an optional death benefit rider, the earnings multiplier benefit rider for which a charge will be assessed quarterly at an annual rate of 0.25% of Account value not to exceed a guaranteed maximum annual rate of 0.50%. The Contracts also provide for a charge of \$25 for each transfer of contract value in excess of 12 transfers per contract year. An optional bonus credit is available at a cost equivalent to an annual rate of 0.60% of the contract value allocated to the subaccounts for three years following the addition of a bonus credit. The premium credit option charge is also deducted from amounts allocated to the fixed-interest options resulting in a 0.60% reduction in the interest that would otherwise have been credited to those amounts in the fixed-interest options for the three contract years following the addition of a credit. Lastly, the Contracts also have a surrender charge in the form of a contingent deferred sales charge ("CDSC"), which is equal to the percentage of each premium payment surrendered or withdrawn and declines from 6% during the first year of the premium payment to 0% after 3 full years. No CDSC applies to contract value representing a free withdrawal amount and or to contract value in excess of aggregate premium payments (less prior withdrawals of premiums).

8. Owners have the options of investing in a series of the GET Fund. During the five year guarantee period, which represents the duration of a series, an owner who invests in a series of the GET Fund would be assessed an annual charge equal to 0.50% of the average daily net assets allocated to the series.

9. If an owner dies before the annuity start date, the Contracts provide, under most circumstances, for a death benefit payable to a beneficiary, computed as of the date Golden American receives written notice and due proof of death. The death benefit payable to the beneficiary depends on whether the owner selected Option Package I, II, or III. Each option package provides a death benefit upon the death of the owner which death benefit is based upon the highest amount payable under the separate death benefit options available under that option package. The death benefit options available under the option packages include: (1) The Standard Death Benefit; (2) the contract value on the claim date, less

credits applied since or within 12 months prior to death; (3) the Annual Ratchet death benefit; and (4) the 5% Roll-Up death benefit.

10. Golden American offers a bonus credit provision under the Contracts with a recurring bonus credit feature pursuant to which Golden American credits contract value in the subaccounts and the fixed-interest allocations with an amount that is a percentage of contract value. An owner may elect the bonus provision at the time of application. The initial bonus credit applies upon issuance of the contract and is based upon contract value at the time of issuance. On the third contract anniversary and every three contract-years thereafter until the annuitization of the Contract, the owner may elect to renew the bonus credit. At the third contract anniversary and every three contract-years thereafter Golden American would apply a new bonus credit to the Contract. Notice of this election will be sent to applicable owners up to sixty days before the third contract anniversary (and separately, before every third contract anniversary thereafter until annuitization of the Contract). Each new bonus credit would be allocated among an owner's subaccount allocations in proportion to the contract value in each subaccount on such contract anniversary. The initial bonus credit equals 2% of the initial contract value and each subsequent bonus credit, if elected, would equal 2% of the contract value on the applicable contract anniversary. Golden American reserves the right to increase or decrease the amount of the bonus credit or discontinue the bonus credit provision in the future. Applicants also reserve the right to modify the charge for the bonus credit consistent with any increase or decrease in the bonus credit. Golden American will provide owners who elect the bonus credit provision with at least 60 days notice of such change. Such a change will only apply to bonuses credited after the 60-day notice period.

11. Under the bonus credit provision, Golden American recaptures or retains the credited amount in the event that the owner exercises his or her cancellation right during the "free look" period. Also, in computing death benefits, Golden American may recapture credits applied since or within twelve months prior to the date of death. Finally, in the event of a surrender, Golden American will recapture all credits applied during the three years prior to surrender.

12. Under the bonus credit provision, Golden American credits amounts to an owner's contract value either by

"purchasing" accumulation units of an appropriate subaccount or adding to the owner's fixed-interest allocation option values. The initial credit is allocated in proportion to the owner's contract value in the subaccounts and fixed-interest allocations at the time of application of the credit. For bonus credits added after the initial credit, credits are allocated in proportion to the owner's contract value in the subaccounts, but not to any fixed-interest allocations. A designated subaccount will be used if there is no contract value in the subaccounts. The designated subaccount will be identified in the Contract prospectus, and the Owner will receive, along with the Contract prospectus, the prospectus for the underlying fund in which the designated subaccount invests.

13. With regard to variable contract value, several consequences flow from the foregoing. First, increases in the value of accumulation units representing bonus credits accrue to the owner immediately, but the initial value of such units only belongs to the owner when, or to the extent that, each vests. Second, decreases in the value of accumulation units representing bonus credits do not diminish the dollar amount of contract value subject to recapture. Therefore, additional accumulation units must become subject to recapture as their value decreases. Stated differently, the proportionate share of any owner's variable contract value (or the owner's interest in an Account) that Golden American can recapture increases as variable contract under (or the owner's interest in the Account) decreases. This dilutes somewhat the owner's interest in the Account vis-a-vis Golden American and other owners, and in his or her variable contract value vis-a-vis Golden American.

14. Lastly, because it is not administratively feasible to track the unvested value of bonus credits in the Account, Golden American deducts the daily mortality and expense risk charge and the daily administrative charge from the entire net asset value of the Account. As a result, the daily mortality and expense risk charge and the daily administrative charge paid by any owner is greater than that which he or she would pay without the bonus credit.

15. Applicants request that the Commission issue an order pursuant to Section 6(c) of the Act, exempting them as well as Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 37(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the recapture of certain credits applied to premium

payments made in consideration of the Contracts.

Applicant's Conditions

Applicants Agree to the Following Conditions

1. *Election letter.* In those states where it is available, sixty days prior to every third contract anniversary, Golden American will send a letter (the "Letter") to each applicable Owner informing him or her that he or she is eligible to elect to renew the bonus credit under the Contract. The Letter will prominently disclose in concise plain English that (a) the credit is most suitable for Owners who expect to continue their Contracts for three or more years, and (b) if the Contract is surrendered while the bonus remains subject to recapture, then the Owner may be worse off in certain circumstances that if he or she had not elected to renew the bonus credit provision. The letter will disclose exactly how an Owner who surrenders a Contract while the bonus credit remains subject to recapture could be worse off as a result of negative separate account investment performance than if he or she had not elected to receive the bonus credit.

2. *Election.* Golden American will send the Letter and an election form directly to Owners eligible to elect the bonus credit provision. If the Letter is more than two pages in length, Golden American will provide the election form as a separate document that also will prominently disclose in concise plain English the statements required in condition 1 above. Elections to receive bonus credits will be effective only upon receipt by Golden American of an election from Owner. The election may be provided in writing, including via facsimile or other electronic media, or provided through telephonic means evidenced by a tape recording. A Letter will precede any election of the bonus credit, including any election via telephonic means. When receiving by telephone an Owner's election to receive a recurring bonus credit, Golden American telephone representatives will recite to the Owner each of the disclosures set forth in condition 1 above, and will request that the Owner separately acknowledge each such disclosure. Golden American will forward to Owners written confirmation of the recurring bonus credit, including confirmation of recurring bonus credits elected via telephonic means.

3. *Records.* Golden American will maintain the following separately identifiable records in an easily accessible place for review by the

Commission staff: (1) Copies of the form of Letter, the election form, any tape recordings, any written confirmations evidencing a recurring bonus—including a recurring bonus elected by telephone, and any written materials or scripts for presentations by representatives regarding the bonus credit, including the dates used; (2) records showing the number and percentage (on a calendar quarter basis) of eligible Owners that elect the bonus credit; (3) records showing—the name and Contract number of each Owner who elects a bonus credit, that Owner's contract value at the time the bonus credit is elected, the amount of the credit, the Owner's name, address, telephone number and date of birth, the date that the owner signed the election form, the signed election form, and, to the extent Golden American pays a commission (or other compensation) to registered representatives in connection with an Owner's election of a bonus credit, the amount of such commission (or other compensation), and the name of any sales representative involved with the solicitation of the election of the credit who receives any compensation in connection with the Contract after the date of the election of the credit and his or her CRD number, firm affiliation, telephone number, and branch office address; (4) records of persistency information for Contracts whose Owners have elected the bonus credit provisions, including the date(s) of any subsequent surrender or withdrawal of contract value and the amount of any recaptured bonus credit; and (5) logs recording any Owner complaints about the recurring bonus credit provisions, state insurance department inquiries about the same, or litigation, arbitration or other proceedings regarding the bonus credit provisions. The logs will include the date of the complaint (or of commencement of any proceedings), the name and address of the person making the complaint or commencing the proceeding, the nature of the complaint or proceeding and the persons involved in the complaint or proceeding. The foregoing records will be retained for the longer of: (1) Six years after the later of their creation or last use, or (2) two years after the recapture period ends.

Legal Analysis

Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act and/or any rule under it 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 purpose fairly intended by the policy and provisions of the Act.

1. Subsection (i) of section 27 provides that section 27 does not apply to any registered separate account variable annuity contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of subsection (i). Paragraph (2) provides that it shall be unlawful for a registered separate account or sponsoring insurance company to sell a variable annuity contract supported by the separate account unless such contract is a redeemable security. Section 2(a)(32) defines a "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

2. Applicants submit that the recapture of bonus credits does not, at any time, deprive an owner of his or her proportionate share of the current net assets of the Account. Until the appropriate recapture period expires, Golden American retains the right to and interest in each owner's contract value representing the dollar amount of any unvested bonus credits. Therefore, Applicants argue, if Golden American recaptures any bonus credit in the circumstances described in the Application, it would merely be retrieving its own assets. Applicants state that Golden American would grant bonus credits out of its general account assets and the amount of the credits (although not the earnings on such amounts) remain Golden American's until such amounts vest with the owner. Thus, Applicants argue that to the extent that Golden American may grant and recapture bonus credits in connection with variable contract value, it does not, at either time, deprive any owner of his or her then proportionate share of an Account's assets.

3. Applicants state that the bonus credit recapture provisions are necessary for Golden American to offer the bonus credits. Applicants argue that it would be unfair to Golden American to permit owners to keep their bonus credits upon their exercise of the Contracts' "free look" provision. Because no CDSC applies to the exercise of the "free look" provision. Applicants state that the owner could obtain a quick profit in the amount of the bonus credit at Golden American's expense by exercising that right. Similarly, the owner could take advantage of the

bonus credit by surrendering the Contract within the recapture period because some of the cost of providing the bonus credit is recouped through charges imposed over a period of years. Likewise, because no additional CDSC applies upon death of an owner, such a death shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at Golden American's expense.

4. Applicants assert that the dynamics of Golden American's bonus credit provisions do not violate sections 2(a)(32) or 27(i)(2)(A) of the Act. Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from these two sections.

5. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in the redeemable securities of any registered investment company. Rule 22c-1 thereunder imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time such among is calculated. Specifically, Rule 22c-1, in pertinent part prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security from selling, redeeming or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security.

6. Golden American's recapture of any bonus credit could be viewed as the redemption of such an interest at a price above net asset value. Applicants contend however, that the bonus credits do not violate Rule 22c-1 under the Act. Applicants argue that bonus credit provisions do not give rise to either of the evils that Rule 22c-1 was designed to address. The Rule was intended to eliminate or reduce, as far as was reasonably practicable, the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption at a price above net asset value, or other unfair results, including speculative trading practices.

7. Applicants argue that the evils prompting the adoption of Rule 22c-1 were primarily the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset

value per share determined as of the close of the market on the previous day. Backward pricing permitted certain investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding shares.

8. Applicants argue that the proposed bonus credit provisions pose no such threat of dilution. Applicants contend that an owner's interest in his or her contract value or in the Account would always be offered under the Contracts at a price determined on the basis of net asset value. Applicants assert recaptures of bonus credits result in a redemption of Golden American's interest in an owner's contract value or in the Account at a price determined on the basis of the Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that Golden American paid from its general account for the credits. Similarly, although owners are entitled to retain any investment gains attributable to the bonus credits, the amount of such gains would always be computed at a price determined on the basis of net asset value.

9. Applicants contend that the Rule 22c-1 should have no application to the bonus credit because neither of the harms that it was intended to address arise in connection with the proposed bonus credit provisions. Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek an exemption from Rule 22c-1.

10. Applicants argue that even if the proposed bonus credit provisions would conflict with sections 2(a)(32) or 27(i)(2)(A) of the Act or Rule 22c-1 thereunder, the Commission should grant the exemptions that they request because the bonus credit provisions are generally very favorable and very beneficial for owners. The recapture provisions of the Contracts temper this benefit somewhat, but owners, unless they die, retain the ability to avoid the recapture. Although, there is a downside in declining markets to bonus credits if the owner dies or if the owner exercises his or her cancellation right during the "free look" period or if the owner surrenders the Contract, the bonus credit provisions (including their dynamic elements) are fully disclosed in the prospectus for the Contracts. The recapture provisions do not, on balance, diminish the overall value of the bonus credit provisions.

11. Applicants state that the Commission's authority under section 6(c) of the Act to grant exemptions from various provisions of the Act and rules

thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, Golden American's successors in interest, Future Accounts and Future Underwriters from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder. Applicants submit that the exemption of these classes of persons is 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 because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. The requested exemptions would only extend to persons that in all material respects are the same as the Applicants. The Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including class exemptions for recapturing bonus credits under variable annuity contracts.

12. Applicants represent that Future Contracts will be substantially similar in all material respects to the Contracts and that each factual statement and representation about the bonus credit provisions of the Contracts will be equally true of Future Contracts. Applicants also represent that each material representation made by them about the Account and DSI will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in this Application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a NASD member.

Conclusion

Applicants assert that the requested exemptions 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 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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