

future separate accounts) and its (or their) investors. First SunAmerica will maintain and make available to the Commission upon request a memorandum setting forth the basis for such determination.

8. First SunAmerica further represents that the assets of the Separate Account and any future separate accounts that rely on the requested order will be invested only in management investment companies that undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b-1 under the 1940 Act, to have such plan formulated and approved by their board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

### Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of mortality, expense risk, and distribution expense charges from the assets of the Separate Account under the Contracts and under any future contracts, and from the assets of any future separate accounts offering contracts which are materially similar to the Contracts, meet the statutory standards of Section 6(c) of the 1940 Act. Accordingly, the Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Rel. No. IC-20873; No. 812-8854]

### Golden American Life Insurance Company, et al.

January 31, 1995.

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

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

**APPLICANTS:** Golden American Life Insurance Company ("Golden American"), Separate Account A of Golden American ("Account A"), Any Other Separate Account Established By

Golden American In The Future To Support Variable Life Insurance Contracts Issued by Golden American ("Future Accounts"), and Directed Services, Inc. ("DSI").

**RELEVANT 1940 ACT SECTIONS:** Order requested under section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C), 27(c)(1) and 27(c)(2) of the 1940 Act and from paragraphs (b)(1), (b)(12)(i), (b)(13)(iv) and (c)(4)(v) of Rule 6e-2 and of Rule 6e-3(T), and from Rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicant request an order that would permit them to deduct a charge from premium payments to compensate Golden American for its increased federal tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended, to the receipt of such payments under certain variable life insurance contracts. Applicants also propose to deduct the charge on a deferred basis from contract cash value, with the balance of any unrecovered amount being deducted upon surrender.

**FILING DATE:** The application was filed on February 23, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 27, 1995, 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 requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants: c/o Golden American, 280 Park Avenue, New York, New York 10017.

**FOR FURTHER INFORMATION CONTACT:** Yvonne M. Hunold, Senior Counsel, or Wendy F. Friedlander, Deputy Chief, at (202) 942-0670, 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 Commission's Public Reference Branch.

### Applicant's Representations

1. Golden American is a stock life insurance company and an indirect subsidiary of Bankers Trust Company ("Bankers").

2. Account A is a separate account established by Golden American and registered under the 1940 Act as a unit investment trust. Each of Account A's 10 divisions invests in a corresponding portfolio of The GCG Trust ("GCG Trust"), a registered open-end management company. Account A is, and any Future Account will be, used to fund certain variable life insurance contracts issued by Golden American, including the GoldenSelect VLI and GoldenSelect VL10 Contracts ("Contracts"). A registration statement to register the Contracts under the Securities Act of 1933 has been filed with the Commission. Applicants state that the Contracts will be issued in reliance on the applicable provisions of either Rule 6e-2 or Rule 6e-3(T).

3. DSI, the principal underwriter for the Contracts, is an indirect wholly-owned subsidiary of Bankers and an affiliate of Golden American. DSI is a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

4. Applicants propose to deduct a charge to reimburse Golden American for the increase in its federal income taxes resulting from the application of Section 848 of the Internal Revenue Code of 1986 ("Code"), as amended, to the receipt of premium payments under the Contracts. The charge will be reasonably related to Golden American's increased federal tax burden. The charge will be deducted either from (a) premiums received, or (b) Contract cash value on a deferred basis in a series of equal periodic installments, with the balance of any unrecovered amount to be deducted upon early surrender of a Contract. The deduction will be the same notwithstanding the manner in which it is deducted.

5. The Omnibus Budget Reconciliation Act of 1990 ("OBRA 1990"), amending Section 848 of the Code, requires life insurance companies of capitalize and amortize over ten years certain general expenses for the current year. Prior law allowed these expenses to be deducted in full from the current year's gross income. Section 848, as amended, effectively accelerates the realization of income from specified contracts and, consequently, the payment of taxes on that income. Taking into account the time value of money, Section 848 increases the insurance company's tax burden because the