

4. Account A is, and the Future Accounts will be, regulated under the 1940 Act as issuers of periodic payment plan certificates. Accordingly, Account A, the Future Accounts, Golden American (as depositor), and DSI (as principal underwriter) are deemed to be subject to Section 27 of the 1940 Act.

5. Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the following conditions are met. The proceeds of all payments (except amounts deducted for "sales load") must be held by a trustee or custodian having the qualifications established under Section 26(a)(1) for the trustees of unit investment trusts. These proceeds also must be held under an indenture or agreement that conforms with the provisions of Section 26(a)(2) and Section 26(a)(3) of the 1940 Act.

6. "Sales load" is defined under Section 2(a)(35), in relevant part, as:

The difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

Sales loads on periodic payment plan certificates are limited by Sections 27(a)(1) and 27(h)(1) to a maximum of 9% of total payments.

7. Certain provisions of Rules 6e-2 and 6e-3(T) provides a range of exemptive relief. Rule 6e-2 provides exemptive relief if the separate account issues scheduled premium variable life insurance contracts as defined in Rule 6e-2(c)(1). Rule 6e-3(T) provides exemptive relief if the separate account issues flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule.

8. Applicants state that paragraph (b)(13)(iii) of Rule 6e-2 implicitly provides, and paragraph (b)(13)(iii) of Rule 6e-3(T) explicitly provides, exemptive relief from Section 27(c)(2) permit an insurer to make certain deductions, other than sales load, including the insurer's tax liabilities from receipt of premium payments imposed by states or by other governmental entities. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by subparagraph (b)(13)(iii) of each Rule. Applicants note, however, that the language of paragraph (c)(4) of the Rules appears to require that deductions for federal tax obligations from receipt of premium payments be treated as "sales load."

9. Applicants state that paragraph (b)(1), together with paragraph (c)(4), of each Rule provides an exemption from the Section 2(a)(35) definition of "sales load" by substituting a new definition to be used for purposes of each respective Rule. Rule 6e-2(c)(4) defines "sales load" charged on any payment as the excess of the payment over certain specified charges and adjustments, including a deduction for state premium taxes. Rule 6e-3(T)(c)(4) defines "sales load" during a period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rules, a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions, arguably causing the deduction to be treated as part of "sales load."

10. Applicants state that the public policy that underlies paragraph (b)(13) of each Rule, and particularly subparagraph (b)(13)(i), like that which underlies paragraphs (a)(1) and (h)(1) of Section 27, is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants submit that this legislative purpose is not furthered by treating a federal income tax charge based on premium payments as a sales load because the deduction is not related to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in paragraph (c)(4) of each Rule.

11. Applicants submit that the source for the definition of "sales load" found in paragraph (c)(4) of each Rule supports this analysis. Applicants believe that, in adopting paragraph (c)(4) of each Rule, the Commission intended to tailor the general terms of Section 2(a)(35) to variable life insurance contracts to ease verification by the Commission of compliance with the sales load limits of subparagraph (b)(13)(i) of each Rule. Just as the percentage limits of Section 27(a)(1) and 27(h)(1) depend on the definition of sales load in Section 2(a)(35) for their efficacy, Applicants assert that the percentage limits in subparagraph (b)(13)(i) of each Rule depend on paragraph (c)(4) of each Rule, which does not depart, in principal, from Section 2(a)(35).

12. Applicants submit that the exclusion from the definition of "sales load" under Section 2(a)(35) of deductions from premiums for "issue

taxes" suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of "sales load" in Rules 6e-2 and 6e-3(T) deductions made to pay an insurer's costs attributable to its federal tax obligations. Additionally, the exclusion of administrative expenses or fees that are "not properly chargeable to sales or promotional activities" also suggests that the only deductions intended to fall within the definition of "sales load" are those that are properly chargeable to sales or promotional activities. Applicants state that the proposed deductions will be used to compensate Golden American for its increased federal tax burden attributable to the receipt of premiums and not for sales or promotional activities. Therefore, Applicants believe the language in Section 2(a)(35) further indicates that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

13. Finally, Applicants submit that it is probably an historical accident that the exclusion of premium tax in subparagraph (c)(4)(v) of Rules 6e-2 and 6e-3(T) from the definition of "sales load" is limited to state premium taxes. When these Rules were each adopted and, in the case of Rule 6e-3(T), later amended, the additional Section 848 tax burden attributable to the receipt of premiums did not yet exist.

14. As noted above, Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the proceeds, other than sales loads, are deposited with and held by a qualified trustee or custodian, as defined in Section 26(a)(1), under a trust agreement that satisfies the requirements of Sections 26(a)(2) and (a)(3). Section 26(a)(2) prohibits payments from the assets of a registered unit investment trust to its depositor or principal underwriter, or their affiliates or agents, unless the payment is reasonable compensation for performing certain bookkeeping and other administrative duties.

15. Section 27(c)(1) prohibits the sale of a period payment plan certificate by any registered investment company, its depositor or its underwriter, unless the certificate is a redeemable security. "Redeemable security" is defined in Section 2(a)(32) as any security which entitles the holder to receive a proportionate share of the issuer's current net assets, or the cash equivalent. Rule 22c-1, in part, prohibits a registered investment company from selling, redeeming or repurchasing a redeemable security it has issued except at a price based on the current net asset value of the security.