

16. Rule 6e-3(T)(b)(1) provides an exemption from Sections 26(a) and 27(c)(1) and Rule 22c-1 in connection with any sales load deducted under Rule 6e-3(T), other than from premiums. Rule 6e-2 does not have a corresponding provision. Rule 6e-3(T)(12)(i) provides, in relevant part, an exemption from Section 27(c)(1) and Rule 22c-1 provided that, to the extent that the calculation of cash value reflects deductions for administrative expenses and fees or sales loads, such deductions need only be made at such times as specified in the Contracts. Although Rule 6e-2(b)(12) provides similar exemptions, it does not provide for the deduction of deferred administrative expenses and fees or deferred sales load. Finally, Rule 6e-3(T)(b)(13)(iv)(C) provides that, subject to other provisions of that Rule, sales loads and administrative expenses or fees may be deducted upon redemption. Rule 6e-2(b)(13)(iv) does not provide similar exemptions. Applicants believe that the omissions noted herein reflect the Commission's assumption at the time it promulgated Rule 6e-2 that sales loads would only be deducted from premiums, rather than a policy decision to forbid other arrangements.

17. Applicants state that it is appropriate to deduct the 1.38% charge on a deferred basis for the same reasons that it is proper to deduct the charge directly from premiums. Nevertheless, Applicants believe they may not be able to rely on paragraphs (b)(1), (b)(12)(i), or (b)(13)(i) of Rules 6e-2 and 6e-3(T) because the deferred charge may be deemed other than an "administrative charge" or other than sales load under Rule 6e-3(T), and because the imposition of deferred charges was not contemplated when Rule 6e-2 was adopted.

18. Applicants submit that the deferred charge is more favorable to a Contract Owner than the direct charge from premiums for the following reasons. First, the premium payments available for investment and, thus, the investment itself, will be greater than it would be if such a charge was deducted from premiums. Second, the total amount charged to any Contract Owner is not more than it would be if it was taken directly from premiums paid. Finally, Contract Owners will obtain these advantages without incurring any additional cost.

19. Applicants further submit that it is equally proper to deduct any remaining amount of the deferred charge upon early surrender of a Contract, and that the deduction will not violate Sections 2(a)(32) or 27(c)(1) or Rule 22c-1. First, any remaining

amount of the charge deducted upon early surrender is the same amount that would have been deducted if the Contract had not been surrendered. Further, this charge represents a burden borne by Golden American for which it is entitled to be reimbursed. Applicants assert that the deduction upon surrender of any unrecovered amount should not be construed as a restriction on redemption. Finally, Applicants maintain that the Contracts are and will be redeemable securities, and that the deduction of any remaining charge upon surrender represents a legitimate deduction under the Contracts.

20. Applicants believe that the exemptions provided by paragraph (b)(1), (b)(12)(i), and (b)(13)(iv) of Rules 6e-2 and 6e-3(T) do not appear to embrace the deduction of the proposed charge on a deferred basis. Rule 6e-2 was adopted when there was less flexibility regarding premium payments and fewer policy features were available to issuers than have subsequently been permitted. In contrast, Rule 6e-3(T) contemplated deferred sales loads and deferred administrative charges, but not the proposed charge.

Applicants submit that: (a) No policy reason exists for the omission of relief for such a deferred charge from the provisions of Rules 6e-2 or 6e-3(T); (b) the deferred charge structure has been accepted as an appropriate feature of life insurance products under Rule 6e-3(T), as well as pursuant to exemptive relief granted by the Commission; (c) the existence of products with deferred charges provides investors a valuable choice; and (d) the Commission has supported efforts to expand investor choice without sacrificing investor protection.

21. Applicants assert that the standards of Section 6(c) are satisfied because the requested relief is appropriate in the public interest and consistent with the purposes of the 1940 Act and the protection of investors. The exemptive relief would: (a) Permit a larger portion of each premium to be immediately invested under a Contract; (b) eliminate the need for Golden American to file additional exemptive applications for each Contract to be issued through a Future Account with respect to the same issues under the 1940 Act that have been addressed in this Application; thus (c) promoting competitiveness in the variable life insurance market by avoiding delay, reducing administrative expenses and maximizing efficient use of resources; and thereby (d) enhancing Golden American's ability to effectively take advantage of business opportunities as they arise. If Golden American were

required to repeatedly seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses.

#### Conditions for Relief

1. Golden American will monitor the reasonableness of the charge to be deducted pursuant to the requested exemptive relief.

2. The registration statement for each Contract under which the above-referenced charge is deducted will: (a) Disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to Golden American's increased federal tax burden under Section 848 of the Code.

3. The registration statement for each Contract providing for the above-referenced deduction will contain as an exhibit an actuarial opinion as to: (a) The reasonableness of the charge in relation to Golden American's increased federal tax burden under Section 848 of the Code resulting from the receipt of premiums; (b) the reasonableness of the targeted rate of return that is used in calculating such charge; and (c) the appropriateness of the factors taken into account by Golden American in determining such targeted rate of return.

#### Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested exemptions to permit Golden American to deduct 1.38% of premium payments under the Contracts are 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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#### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Three-Five Systems, Inc., Common Stock, \$0.01 Par Value) File No. 1-4373

February 1, 1995.

Three-Five Systems, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule