

40. How satisfied were you with the assistance you received from OPM in filing the paperwork needed to obtain benefits?

- (Check One)
a. Very satisfied.
b. Generally satisfied.
c. Neither satisfied or dissatisfied.
d. Generally dissatisfied.
e. Very dissatisfied.

41. Do you have a personal computer and a modem?

- (Check One)
a. Yes.
b. No. (Skip to Question #43)

42. Do you have access to any of the following On-line services?

- (Check All that Apply)
a. CompuServe.
b. USENET.
c. America On-line.
d. Prodigy.
e. Genie.
f. Other (Please specify.)

Part V

Retirement Counseling

Please answer the following questions only if you retired within the last two years.

43. Did you receive retirement counseling?

- (Check One)
a. No. (Skip to Question #51.)
b. Yes.

44. Who initiated the contact to plan for your retirement?

- (Check One)
a. I did.
b. My agency did.
c. I don't remember.

45. Who did the counseling?

- (Check One)
a. An employee of my former agency.
b. A contract employee to my former agency.
c. I don't know.

46. When did your agency start to counsel you concerning your retirement planning?

- (Check One)
a. More than one year before I retired.
b. Six to twelve months before I retired.
c. Less than six months before I retired.

47. What did the counseling cover?

- (Check All That Apply)
a. Retirement coverage.
b. Amount of annuity.
c. Survivor benefits.
d. Health insurance benefits.
e. Life insurance benefits.
f. Social Security benefits.
g. Thrift Savings Plan.
h. Other (Please specify.)

48. How satisfied were you that the information from your agency (including responses to your questions and concerns) was accurate and up to date?

- (Check One)
a. Very satisfied.
b. Generally satisfied.
c. Neither satisfied nor dissatisfied.

- d. Generally dissatisfied.
e. Very dissatisfied.

49. How satisfied were you with how well your agency helped you in taking appropriate actions (such as submitting retirement forms and making decisions about health and life insurance) and in learning what to expect after you retired (such as how long it would take to get your annuity, notices to be received, tax withholding, etc.)?

- (Check One)
a. Very satisfied.
b. Generally satisfied.
c. Neither satisfied nor dissatisfied.
d. Generally dissatisfied.
e. Very dissatisfied.

Comments (Especially about any improvements you would suggest.)

Blank lines for handwritten comments.

50. How did your agency's estimate of your annuity compare with the annuity computed by OPM?

- (Check One And Skip To Question #52)
a. The annuity estimate was close to the annuity computed by OPM.
b. The annuity estimate was significantly more than the annuity computed by OPM.
c. The annuity estimate was significantly less than the annuity computed by OPM.
d. I did not receive an annuity estimate from my agency.
e. I don't remember.

51. If your employing agency never counseled you, where did you go to get information on retirement and insurance matters?

- (Check All That Apply)
a. National Association of Retired Federal Employees (NARFE).
b. Private publications (such as Federal Employees Almanac).
c. I contacted OPM directly.
d. Other.
e. I didn't receive any retirement planning information.

52. In planning your retirement, did you?

- (Check One)
a. Attend agency sponsored retirement seminars AND receive individual counseling from your personnel office.
b. Only attend an agency sponsored retirement seminar.
c. Only receive individual counseling.
d. Neither retirement seminars nor individual counseling was provided by my agency.

53. Were you provided a copy of "Thinking About Retirement"?

- (Check One)
a. Yes.
b. No.
c. I don't know.

Thank you for your cooperation. We appreciate your help. Please return the completed questionnaire in the postage paid envelope to: U.S. Office of Personnel

Management, Client Satisfaction Survey, Room 4316, RIS/QAD, Attention: Dom Marro/Nancy Wolf, 1900 E Street, N.W., Washington, DC 20415.

If you have any comments about how OPM has served you or if you have suggestions on how we can improve our service, please write them in the space below.

Blank lines for handwritten comments.

If you have questions concerning your annuity or survivor annuity, write directly to: U.S. Office of Personnel Management, Retirement Operations Center, Boyers, PA 16017.

[FR Doc. 95-10122 Filed 4-24-95; 8:45 am] BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-21021; No. 812-8154]

General American Life Insurance Company, et al.

April 19, 1995.

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

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

APPLICANTS: General American Life Insurance Company ("General American"), General American Separate Account Eleven ("Account 11") and Walnut Street Securities, Inc. ("Underwriter").

RELEVANT 1940 ACT SECTION: Order requested under Section 6(c) granting exemptions from Sections 27(c)(2) and 27(e) of the 1940 Act and from Rules 6e-3(T)(b)(13)(vii), 6e-3(T)(c)(4)(v) and 27e-1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit Account 11 and other variable life insurance separate accounts that General American may establish in the future ("Future Accounts") to: (1) Deduct a charge from premium payments under certain variable life insurance contracts to compensate General 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; and (2) to permit General American not to send such contract owners a written notice of their refund and withdrawal rights.

FILING DATES: The application initially was filed on November 9, 1992, declared inactive on August 12, 1993, and amended on September 12, 1994, and April 14, 1995.

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 May 15, 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, N.W., Washington, D.C. 20549. Applicants: c/o Matthew P. McCauley, Esq., General American Life Insurance Company, 700 Market Street, St. Louis, Missouri 63101.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Wendy 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.

Applicants' Representations

1. General American, a mutual life insurance company, is principally engaged in offering insurance policies and annuity contracts. General American is authorized to conduct business in the District of Columbia, all states except New York, and ten Canadian provinces.

2. Account 11 is a separate account established by General American and registered as a unit investment trust under the 1940 Act. Account 11 currently has 13 sub-accounts, each of which invests in corresponding portfolios of one of four series-type registered open-end, diversified management investment companies (collectively, "Funds").¹ The Future Accounts will be separate accounts, as defined in Rule 0-1(e) under the 1940

Act, and registered as unit investment trusts under the 1940 Act.

3. The Underwriter acts as principal underwriter for certain variable life and variable annuity contracts by General American. The Underwriter 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 Underwriter is an indirect wholly-owned subsidiary of General American.

4. Account 11 currently funds two flexible premium variable life insurance contracts offered by General American, the VUL-95 Contract and the General Select Plus Contract (together, "Existing Contracts"). Account 11 will, and Future Accounts may, be used to fund a new flexible premium variable life insurance contract ("Contract"), as well as other flexible premium variable life insurance contracts ("Future Contracts") that in the future may be offered by General American. (Future Contracts and Existing Contracts are hereinafter referred to together as "Other Contracts".) Interests in all of the contracts are or will be registered as securities under the Securities Act of 1933.

5. The Contract offers the payment of premiums in any amount and frequency, subject to certain limitations, three death benefit options, cash value, loan privileges and other traditional life insurance features. The Contract owner may receive a refund of premium payments by cancelling and returning the Contract within the latest of: (1) 20 days of receipt (30 days for California residents, and for age 60 or older), (2) 45 days of signing the application, or (3) 10 days of General American's mailing a notice of this provision to the Contract owner.²

6. Certain charges and deductions are made under the Contract to compensate General American for its costs and expenses.

(a) Premium Tax Charge

A charge of 2.10% is deducted from each premium payment for state taxes assessed on premium payments received by General American. Such premium taxes vary from jurisdiction to jurisdiction and range between 0.75% to 3.50%. This charge represents the average deduction considered necessary for General American to pay such taxes. Some jurisdictions do not impose a premium tax while others may impose a tax that is greater than or less than the

2.10% deduction under the Contract. If the average premium tax increases in the future, General American may increase this deduction.

(b) Section 848 Deferred Acquisition Costs Charge

A charge of 1.25% ("DAC Tax Charge") will be deducted from each premium payment to reimburse General American for its increased federal income tax burden resulting from changes made to Section 848 of the Internal Revenue Code of 1986 ("Code"), by the Omnibus Budget Reconciliation Act of 1990 ("OBRA 1990"), affecting the treatment of deferred acquisition costs. The requested order would permit the deduction of 1.25% of each premium payment under the Contract and Future Contracts. The 1.25% DAC Tax Charge will not be deducted under Existing Contracts issued prior to the receipt of the requested order. However, the DAC Tax Charge may be deducted under Existing Contracts issued after issuance of the requested order³ and after endorsements permitting the charge have been approved by insurance regulators in each applicable jurisdiction. Applicants represent that the DAC Tax Charge is a legitimate expense of the company, is not used for sales and distribution expenses and will be reasonably related to General American's increased federal tax burden.

(c) Administration Charge

The monthly administration charge is \$13 per month during the first Contract year, and \$6 per month thereafter. This charge cannot be increased under a Contract once it is issued.

(d) Selection and Issue Expense Charge

The selection and issue expense charge is \$0.16 per month per \$1,000 of face amount during the first Contract year and \$0.01 per month per \$1,000 of face amount thereafter. In the event that the face amount is increased (other than by a change in death benefit options or increasing death benefit rider), this charge is \$0.16 per month per \$1,000 of increased face amount during the first Contract year following the increase and \$0.01 per month per \$1,000 of face amount thereafter.

(e) Cost of Insurance Charge

The monthly cost of insurance charge varies with each Contract because it is based on the attained age, rate class, and sex (except Montana) of the insured.

¹ The Funds include General American Capital Company, Variable Insurance Products Fund, Variable Insurance Products Fund II, and Van Eck Investment Trust.

² Contracts purchased in Kansas provide for a return of an amount equal to the: (1) difference between premium payments and amounts allocated to Account 11; and (2) cash value on the date the Contract is returned.

³ Applicants undertake to make this representation in an amendment to the Application, which is to be filed during the notice period.

(f) Charge for Riders

A monthly charge will be deducted for any riders. This charge will vary with each Contract.

(g) Mortality and Expense Risk Charge

A daily charge equivalent to an effective annual rate of .90% of Account 11's average daily net assets⁴ will be deducted for General American's assumption of mortality and expense risks.

(h) Contingent Deferred Sales Charge ("CDSC")

For a period of up to 15 years after issuance of the Contract or an effective face amount increase, General American will impose a CDSC upon surrender, lapse, a requested decrease in face amount or a partial withdrawal that results in a decrease in face amount.

The amount of the CDSC will depend upon a number of factors, including the type of event, amount of premium payments made prior to the event, number of Contract years that has

elapsed since issuance of the Contract or face amount increase, as applicable.

A separate CDSC applies to the initial face amount and to each increase in face amount and is deducted whenever, and to the extent that, a surrender, lapse or face amount decrease affects the applicable increment of face amount. The length of time over which a CDSC will apply to any increment of face amount will depend upon the attained age of the insured on the issue date or the effective date of the increase, as applicable, and the insured's sex and risk class, as follows:

CONTINGENT DEFERRED SALES CHARGE PERIOD

[Duration in years]

Insured's age	Male non-smoker	Male smoker	Female non-smoker	Female smoker
0-50	15	15	15	15
51	14	14	14	14
52	13	13	13	13
53	12	12	12	12
54	11	11	11	11
55-79	10	11	10	10
80	10	6	10	10

The CDSC will equal the CDSC grading percentage⁵ multiplied by the sum of (1) and (2) where: (1) is 40% of the lesser of the premium payments made or the target premium for the Contract, and (2) is the excess premium surrender charge factor multiplied by premium payments made in excess of the target premium for the Contract. With regard to a face amount increase, multiplied by the sum of (1) and (2) where: (1) is 40% of the lesser of the premium payments attributable to the increase, and (2) is the excess premium surrender charge factor multiplied by the premium payments attributable to the increase in excess of the target premium for the increase. The excess premium surrender charge factors vary with the attained age, sex and risk class of the insured. The target premium for the Contracts is somewhat less than the guideline annual premium ("GAP") as defined in Rule 6e-3(T)(c)(8).

The CDSC for the initial face amount during the first two Contract years will not exceed: (a) 30% of the first GAP paid under the Contract; (b) 10% of the second GAP paid; and (c) 9% of premium payments made in excess of two GAPs. The CDSC for any increase in face amount during the first two Contract years following the increase will not exceed: (a) 30% of the first GAP

attributable to the increase; (b) 10% of the second GAP attributable to the increase; and (c) 9% of premium payments attributable to the increase of two GAPs.

7. *Application of Section 848 of the Code.* Section 848 of the Code, as amended by OBRA, requires life insurance companies to capitalize and amortize over a period of ten years part of their 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 effectively accelerates the realization of income from certain categories of life insurance and other contracts ("Specified Contracts") categorized under this Section and, thus, the payment of taxes on that income. The Contract and Other Contracts will be categorized under Section 848 as Specified Contracts. Taking into account the time value of money, Section 848 increases the insurance company's tax burden because the amount of general deductions that must be capitalized and amortized is measured by the premiums received under the Specified Contracts.

8. The amount of deductions subject to Section 848 equals a percentage of the current year's net premiums received (i.e., gross premiums minus return premiums and reinsurance premiums)

under the Specified Contracts. Consequently, 7.7% of the net premiums received must be capitalized and amortized under the schedule set forth in Section 848(c)(1) of the Code.

9. The increased tax burden on every \$10,000 of net premiums received is quantified as follows. For each \$10,000 of net premiums received in a given year, Section 848 requires General American to capitalize \$770 (i.e., 7.7% of \$10,000), and \$38.50 of this amount may be deducted in the current year. The remaining \$731.50 (\$770 less \$38.50), which is subject to taxation at the corporate tax rate of 35%, results in General American owing \$256.03 (.35% x \$731.50) more in taxes for the current year than it otherwise would have owed prior to OBRA 1990. However, the current tax increase will be partially offset by deductions that will be allowed during the next ten years as a result of amortizing the remainder of the \$770 (\$77 in each of the following nine years and \$38.50 in year ten).

10. In its business judgment, General American believes it appropriate to use a discount rate of at least 10% in evaluating the present value of its future tax deductions for the following reasons. Capital that General American must use to pay its increased federal tax

⁴ The value of Account 11's net assets will reflect

operating expenses of the Funds held by Account 11.

⁵ Grading percentages range, on a declining scale,

policy year, and vary depending on the sex, issue

burden under Section 848 will be unavailable for investment. The cost of capital used to pay this increased tax burden essentially will be General American's after tax rate of return on surplus (i.e., return sought on invested capital), which is 10% to 12%. Accordingly, Applicants assert that the after tax rate of return on surplus is appropriate for use in this present value calculation.

11. In determining the after tax rate of return, General American considered a number of factors, including market interest rates, anticipated long-term growth rate, acceptable risk levels, inflation, and available information about the rates of return obtained by other mutual life insurance companies. General American represents these are appropriate factors to consider.

12. General American first projects its future growth rate based on sales projections, current interest rates, inflation rate, and the amount of surplus that it can provide to support such growth. General American then uses these factors, giving market interest rates, acceptable risk level, and inflation rate significantly more weight, to set a rate of return on surplus equal to or in excess of the anticipated rate of growth. General American seeks to maintain a ratio of surplus to assets that it establishes based on its judgment of the risks represented by various components of its assets and liabilities. Maintaining the ratio of surplus to assets is critical to General American maintaining a competitive rating from various rating agencies and to offering competitively priced products. Consequently, General American's surplus must grow at least at the same rate as its assets.

13. Using a federal corporate tax rate of 35%, and assuming a discount rate of 10%, the present value of the tax effect of the increased deductions allowable in the following ten years, which partially offsets the increased tax burden, comes to \$160.40. The effect of Section 848 on the Contracts and Other Contracts is therefore an increased tax burden with a present value of \$95.63 for each \$10,000 of net premiums received (i.e., \$256.03 minus \$160.40).

14. General American does not incur incremental federal income tax when it passes on state premium taxes to Contract Owners because state premium taxes are deductible in computing federal income taxes. Conversely, federal income taxes are not deductible in computing General American's federal income taxes. To compensate General American fully for the impact of Section 848, General American must impose an additional charge to make it

whole not only for the \$95.63 additional tax burden attributable to Section 848, but also for the tax on the additional \$95.63 itself. This federal tax can be determined by dividing \$95.63 by the complement of 35% federal corporate income tax rate (i.e., 65%), resulting in an additional charge of \$147.12 for each \$10,000 of net premiums, or 1.47%.

15. Based on its prior experience, General American reasonably expects to take almost all future deductions. It is General American's judgment that a 1.25% charge would reimburse it for its increased federal income tax liabilities under Section 848. Applicants represent that the 1.25 charge will be reasonably related to General American's increased federal income tax burden under Section 848. This representation takes into account the benefit to General American of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to General American's cost of capital) in computing the future deductions resulting from such amortization. To the extent that General American's actual cost of capital exceeds an annual rate of 10%, the calculation of this increased tax burden will continue to be reasonable over time.

16. General American believes that the 1.25% charge would have to be increased if future changes in, or interpretations of, Section 848 or any successor provision result in a further increased tax burden due to receipt of premiums. The increase could be caused by a change in the corporate tax rate, or in the 7.7% figure, or in the amortization period. Accordingly, the Contract, Future Contracts and endorsements to the Existing Contracts offered after issuance of an order in this matter will or may reserve the right to increase, or decrease, the 1.25% charge in response to such future changes or interpretations that increase or decrease its tax burden. Any increase of the charge above 1.25% would require additional exemptive relief from the Commission under the 1940 Act.

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act for exemptions from Section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from premium payments of a DAC Tax Charge in an amount that is reasonable in relation to General American's increased federal tax burden based on receipt of premiums under the Contract. The DAC Tax Charge also may be included in Future Contracts and may be added to Existing Contracts issued after receipt of the order requested herein. Applicants

also request exemptions from Rule 6e-3(T)(c)(4)(v) under the 1940 Act to permit the proposed DAC Tax Charge to be treated as other than "sales load," as defined under Section 2(a)(35) of the 1940 Act, for purposes of Section 27 and the exemptions from various provisions of that Section found in Rule 6e-3(T).

2. Applicants also request an order under Section 6(c) exempting them and any Future Accounts from Section 27(e) of the 1940 Act and Rules 27e-1 and 6e-3(T)(b)(13)(vii) thereunder to the extent necessary to eliminate the requirement of written notice to owners of the Contract or Future Contracts concerning certain withdrawal and refund rights.

3. Section 6(c) authorizes the Commission, by order and upon application, to exempt any person, security, or transaction, or class of persons, securities, or transactions, from any provisions of the 1940 Act. The Commission grants relief under Section 6(c) to the extent an exemption is "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]."

A. DAC Tax Charge

1. *Section 27(c)(2)*. Section 27(c)(2) prohibits any deduction from premium payments made under periodic payment plan certificates other than a deduction for "sales load." "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 9% of total payments.

2. *Rule 6e-3(T)(b)*. Certain provisions of Rule 6e-3(T) provide exemptive relief from Section 27(c)(2) if the separate account issues flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule. Rule 6e-3(T)(b)(13)(iii) provides exemptive relief from Section 27(c)(2) to permit an insurer to make certain deductions, other than sales load, including "[t]he deduction of premium or other taxes imposed by any State or other governmental entity."

3. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by subparagraph (b)(13)(iii)(E) of Rule 63-3(T), but that the language of paragraph (c)(4) of the Rule appears to require that deductions for federal tax obligations from receipt of premium payments be treated as "sales load." Applicants state that they request relief from Section 27(c)(2) only to preclude the possibility that a charge related to the increased burden resulting from Section 848 is not covered by the exemption provided by Rule 6e-3(T)(b)(13)(iii)(E). Applicants submit that the public policy reasons underlying subparagraph (b)(13)(iii)(E) provide support for the exemption requested.

4. *Rule 6e-3(T)(c)(4)*. Paragraph (b)(1), together with paragraph (c)(4), of Rule 6e-3(T) provide an exemption from the Section 2(a)(35) definition of "sales load" by substituting a new definition to be used for purposes of the Rule.

Rule 6e-3(T)(c)(4) defines "sales load" during a period as the excess of any purchase payments made during that period over certain itemized charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rule, 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." Applicants maintain, however, that there is no public policy reason why a tax burden charge designed to cover the expense of federal taxes should be treated as sales load or otherwise be subject to the sales load limits of Rule 6e-3(T). Moreover, Applicants assert that nothing in the administrative history of Rule 6e-3(T) suggests that the Commission intended to treat tax charges as sales load.

5. Applicants argue that the exemption is necessary in order for Account 11 and any Future Account to rely on subparagraph (c)(13)(i), which provides critical exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Applicants note that issuers and their affiliates may only rely, however, on subparagraph (b)(13)(i) if they meet its alternate limits that apply to sales load as defined in paragraph (c)(4). Applicants represent that they and Future Accounts could not meet these limits if the DAC Tax charge is included in sales load.

6. Applicants assert that the public policy that underlies paragraph (b)(13) of Rule 6e-3(T), and particularly subparagraph (b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1),

is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants argue 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.

7. Applicants suggest that the source for the definition of "sales load" found in paragraph (c)(4) of Rule 6e-3(T) supports this analysis. In adopting paragraph (c)(4) of the Rule, the Commission intended to tailor the general terms of Section 2(a)(35) to flexible premium variable life insurance contracts to ease verification by the Commission of compliance with the sales load limits of subparagraph (b)(13)(i) of the 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, the percentage limits in subparagraph (b)(13)(i) of Rule 6e-3(T) depend on paragraph (c)(4), which does not depart, in principle, from Section 2(a)(35).

8. Applicants further suggest that the exclusion from the definition of "sales load" under Section 2(a)(35) of deductions from premiums for "issue taxes" indicates that it is consistent with the policies of the 1940 Act to exclude from the definition of "sales load" in Rule 6e-3(T) deductions made to pay an insurer's costs attributable to its federal tax obligations. By extension, it is equally consistent to exclude such charges from Rule 6e-3(T)(c)(4) definition of sales load. 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. The proposed deductions will be used to compensate General American for its increased federal tax burden attributable to the receipt of premiums and not for sales or promotional activities. Therefore, the language in Section 2(a)(35) further indicates that not treating such deductions as sales load is consistent with the policies and provisions of the 1940 Act.

9. Finally, Applicants submit that it is probably an historical accident that the exclusion of premium tax in

subparagraph (c)(4)(v) of Rule 6e-3(T) from the definition of "sales load" is limited to state premium taxes. When Rule 6e-3(T) was adopted and later amended, the additional Section 848 tax burden attributable to the receipt of premiums did not yet exist.

10. *Applicant's Conditions for DAC Tax Relief*: Applicants agree to the following conditions:

(a) General American will monitor the reasonableness of the 1.25% DAC Tax Charge;

(b) The registration statement for any variable life insurance contract under which the 1.25% charge is deducted will include: (1) disclosure of the charge; (2) disclosure explaining the purpose of the charge; and (3) a statement that the charge is reasonable in relation to General American's increased federal tax burden under Section 848 of the Code; and

(c) General American also will include as an exhibit to the registration statement for any variable life insurance contract under which the 1.25% charge is deducted an actuarial opinion as to: (1) the reasonableness of the charge in relation to General American's increased federal tax burden under Section 848 of the Code; (2) the reasonableness of the after-tax rate of return that is used in calculating such charge; and (3) the appropriateness of the factors taken into account by General American in determining such after-tax rate of return.

11. *Request for Class Relief*.

Applicants also request exemptions to deduct the DAC Tax Charge for any Future Account established by General American to support Future Contracts, as defined in Rule 6e-3(T)(c)(1). Applicants assert that granting exemptive relief to deduct the 1.25% DAC Tax Charge from the assets of any Future Account established in connection with the issuance of Future Contracts would promote competitiveness in the variable life insurance market by eliminating the need for General American to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Applicants further represent that the delay and expense involved in having repeatedly to seek exemptive relief would impair General American's ability effectively to take advantage of business opportunities as they arise. Further, any additional requests for exemptive relief for such Future Accounts would present no issues under the 1940 Act that have not already been addressed in this application. Without the requested relief, General American would have to

obtain exemptions for each Future Account with respect to the same issues addressed in this application. Thus, investors would receive no benefit or additional protection and might be disadvantaged by General American's increased overhead expenses.

12. Applicants submit that, for the reasons stated above, it 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 1940 Act to deduct a DAC Tax Charge and to exclude it from sales load.

B. Waiver of Notice of Withdrawal and Refund Rights

1. Section 27(e) requires, with respect to any periodic payment plan certificate sold subject to Section 27(d), written notification of the right to surrender and receive a refund of the excess sales load. Section 27(d) requires the refund of any excess sales load paid during the first eighteen months after issuance of a periodic payment plan certificate. Rule 27e-2 establishes the requirements for the notice mandated by Section 27(e) and prescribes Form N-271-1 for that purpose. Rule 6e-3(T)(b)(13) modifies the requirements of Section 27 and the rules thereunder. Rule 6e-3(T)(b)(13)(vii) adopts Form N-27-1, originally intended for application to contractual plans, and requires it to be sent to a contract owner upon issuance of the contract and again during any lapse period in the first two contract years. The Form requires statements of (1) the contract owner's right to a refund of the excess sales load for a surrender during the first two contract years, (2) the date that the right expires, and (3) the circumstances in which the right may not apply upon lapse. Thus, Section 27(e) of the 1940 Act and Rules 27e-1 and 6e-3(T)(b)(13)(vii), in effect, require a notice of right of withdrawal and refund, on Form N-271-1, to be provided to owners of the Contracts or Future Contracts ("Contract Owners") entitled to a refund of sales load in excess of the limits stated in paragraph (b)(13)(v)(A) of Rule 6e-3(T).

2. Applicants note that the CDSC may be deducted upon surrender, face amount reduction or lapse of the Contract, which does not assess any other sales charges. The CDSC does not, during the first two Contract years, or during the first two Contract years after the increase in face amount, exceed the limits described under paragraph (b)(13)(v)(A) of Rule 6e-3(T), beyond which sales charges are characterized as "excess sales charges." Thus, Applicants assert that no "excess sales charge" is ever paid by a Contract

Owner surrendering, reducing the face amount, or lapsing in the first two Contract years, or during the first two Contract years after the increase in face amount. Moreover, Applicants state that the Contract does not impose an excess sales load upon lapse, thus negating the value of a notice being sent during the lapse period.

3. Rule 27e-1, pursuant to which Form N-271-1 was first prescribed, specifies in paragraph (e) that a notice need be mailed when there is otherwise no entitlement to receive any refund of sales charges. Moreover, Rule 27e-1 and Rule 6e-2, from which Rule 6e-3(T) was derived, were adopted in the context of front-end loaded products only and in the broader context of the companion requirements in Section 27 for the depositor or underwriter to maintain segregated funds as security to assure the refund of any excess sales charges.

4. Applicants submit that requiring of a Form N-271-1 could confuse Contract Owners or encourage them to surrender during the first two Contract years, or surrender or decrease face amount during the first two Contract years following a face amount increase, when it may not be in their best interests to do so. A Contract Owner with a declining contingent deferred sales load, unlike a contract with a front-end sales charge, does not foreclose the opportunity, at the end of the first two Contract years, to receive a refund of monies spent. Such a Contract Owner has not paid any excess sales charge and, as the deferred sales charge declines over the life of the Contract, may never pay it. Applicants thus assert that encouraging a surrender during the first two Contract years could cost such a Contract owner more in total sales load, relative to total premium payments, than would otherwise be paid if the Contract were held for the long-term period originally intended.

5. Applicants submit that the absence of excess sales charge and, therefore, the absence of an obligation to assure repayment of that amount, do not create a right in a Contract owner which Form N-271-1 was designed to highlight. In the absence of this right, the notification contemplated by Form N-271-1 is an unnecessary and counter-productive administrative burden the cost of which appears unjustified. Any other purpose potentially served by Form N-271-1 would already be addressed by the required Form N-271-2 Notice of Withdrawal Right, generally describing the charges associated with the Contract, and prospectus disclosure detailing the sales load design. Neither Congress, in enacting Section 27, nor the Commission, in adopting Rule 27e-

1, contemplated the applicability of Form N-271-1 in the context of a contract with a declining contingent deferred sales load.

C. Applicants' Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the exemptions requested under Section 6(c) of the 1940 Act form: (1) Section 27(c)(2) of the 1940 Act and Rule 6e-3(T)(c)(4)(v) thereunder to permit General America to deduct up to 1.25% from premium payments as a DAC Tax Charge, and (2) under Section 27(e) of the 1940 Act and Rules 27e-1 and 6e-3(T)(b)(13)(vii) thereunder to permit the elimination of the requirement of written notice to owners of the Contract or Future Contracts concerning certain withdrawal and refund rights, 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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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, May 18, 1995, from 8:30 a.m. to 12:30 p.m. in Room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street, SW, in Washington, DC. This will be the twenty-first meeting of the COMSTAC. In addition to reports from the respective COMSTAC Working Groups, the meeting will provide a legislative update on Congressional activities involving commercial space transportation; a briefing on the status of the insurance industry; an activities report from the Office of Commercial Space Transportation; and other related topics. This meeting is open to the public; however, space may be limited. Additional information may be obtained by contacting Linda H. Strine at (202) 366-5770.