designed to facilitate investments by energy companies such as Xcel in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[12] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: Restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon (''Operating Agreement''), the business and affairs of the company shall be managed by its board of managers (''Board''). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: The sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18931 Filed 7–24–03; 8:45 am]

BILLING CODE 8010–01–P

[12] Xcel is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Progress Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26101; File No. 812–12924]

ReliaStar Life Insurance Company of New York, et al.

July 21, 2003.

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

ACTION: Notice of application for an amended order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemption from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

APPLICANTS: ReliaStar Life Insurance Company of New York (''RLNY''), Separate Account NY–B of ReliaStar Life Insurance Company of New York (''Account NY–B''), Golden American Life Insurance Company (''Golden American'') (with RLNY, the ''Life Companies''), Separate Account B of Golden American Life Insurance Company (''Account B'') (with Account NY–B, the ''Accounts''), any other separate accounts of RLNY or Golden American that support Future Contracts (defined below) (collectively, the ''Future Accounts'') and Directed Services, Inc. (''DSI'') (together, the ''Applicants'').

SUMMARY OF THE APPLICATION: Applicants hereby amend and restate an application originally filed on January 31, 2003 for an order to amend an existing order [1] (''Existing Order'') to: (1) Add Golden American, Account B, and DSI (collectively, ''Additional Applicants'') as parties to the Existing Order, and (2) permit the Additional Applicants to recapture certain bonuses applied to purchase payments made under (a) certain deferred variable annuity contracts and certificates, including certain certificate data pages and endorsements, that Golden American will issue through Account B (the ''Account B Contracts'') and under (b) contracts and certificates, including certain certificate data pages and endorsements, that the Life Companies may issue in the future through Account B or the Future Accounts of the Life Companies (together with Account B, the ''Accounts'') and that are substantially similar in all material respects to the deferred variable annuity contracts (''Account NY–B Contracts'') covered by the Existing Order (collectively, the ''Future Contracts'' and together with the Account B Contracts, the ''Contracts''). Applicants also request that the order being sought extend to any National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with any Additional Applicant, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts offered through the Accounts (collectively ''Affiliated Broker-Dealers'').

FILING DATE: The Application was filed on January 31, 2003, and amended and restated on June 4, 2003, and June 27, 2003.

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 August 15, 2003, 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.

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. RLNY is a stock life insurance company originally incorporated under the laws of New York (originally incorporated under the name Morris Plan Insurance Society) on June 11, 1917. RLNY is engaged in the business of writing life insurance and annuities, both individual and group, and is authorized to do business in all 50 states. RLNY is a wholly-owned subsidiary of Security-Connecticut Life Insurance Company, which is a wholly-owned subsidiary of ReliaStar Life Insurance Company. RLNY is ultimately controlled by ING Groep N.V., a global financial services holding company with approximately $470.9 billion in assets as of December 31, 2002. As of December 31, 2002, Golden American had assets of approximately $17.6 billion. For purposes of the Act, RLNY is the depositor and sponsor of Account NY–B as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

2. Golden American is a stock life insurance company originally incorporated under the laws of Minnesota on January 2, 1973, and later redomiciled to 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 Life Insurance Company of Iowa, which, in turn is a subsidiary of Lion Connecticut Holdings, Inc. Golden American is also ultimately controlled by ING Groep N.V. For purposes of the Act, Golden American is the depositor and sponsor for Account B, as those terms have been interpreted by the Commission with respect to variable annuity separate accounts. Golden American also serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under Future Contracts. Golden American may establish one or more additional Future Accounts for which it will serve as depositor.

3. Golden American established Account B as a segregated investment account under Delaware law on July 14, 1988. Under Delaware law, the assets of Account B attributable to the Account B 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 B, are credited to or charged against that subaccount without regard to any other income, gains or losses of Golden American. Account B 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.

4. Each of the Accounts currently is divided into a number of subaccounts. Each subaccount 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 each Account support one or more varieties of variable annuity contacts, including the Contracts. Account NY–B is registered with the Commission as a unit investment trust (File No. 811–7935), and interests in the Account to be offered through the Contracts have been registered under the 1933 Act on Form

[1] ReliaStar Life Insurance Company of New York, Investment Company Act Release No. 25875 (Jan. 22, 2003) (File No. 812–12914).

N–4 (File No. 333–85618). Account B is registered with the Commission as a unit investment trust (File No. 811–5626), and interests in the Account to be offered through the Contracts have been registered under the 1933 Act on Form N–4 (File No. 333–101481).

5. DSI is a wholly owned subsidiary of Lion Connecticut Holdings, Inc. It serves as the principal underwriter of a number of RLNY and Golden American separate accounts registered as unit investment trusts under the Act, including the Accounts, and is the distributor of 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 are deferred combination variable and fixed annuity contracts that RLNY and Golden American may issue to individuals or groups on a ''non-qualified'' basis or in connection with employee benefit plans that receive favorable federal income tax treatment under Sections 401, 403(b), 408, 408A or 457 of the Internal Revenue Code of 1986, as amended (the ''Code'').

7. The Contracts make available a number of subaccounts of the Accounts 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 RLNY or Golden American, as applicable, credit guaranteed rates of interest for various periods. Transfers of contract 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. The Contracts offer a variety of annuity payment options to owners. In the event of an owner's (or, in certain circumstances, an annuitant'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. In general, the Contracts offer all of the features typically found in variable annuity contracts today.

8. The Contracts generally may only be purchased with a minimum initial premium of $15,000 ($1,500 for certain employee benefit plans) under Option Package I and $5,000 ($1,500 for certain employee benefit plans) for Option Packages II and III. RLNY or Golden American, as applicable, may deduct a premium tax charge from premium payments in certain states, but otherwise deducts a charge for premium taxes upon surrender or annuitization of the Contract or upon the payment of a death benefit, depending upon the jurisdiction. The Contracts provide for an annual administrative charge of $30 that RLNY or Golden American, as applicable, deducts on each Contract Anniversary and upon a full surrender of a Contract and a daily administrative charge deducted from the assets of the Account at an annual rate of 0.15% of the Account's average daily net assets. A daily mortality and expense risk charge is deducted from the assets of the Accounts at the following annual rates:

Account NY–B Contracts: 0.90% for Option Package I, 1.10% for Option Package II, and 1.25% for Option Package III, of the Account's average daily net assets. Account B Contracts: 0.95% for Option Package I, 1.15% for Option Package II, and 1.30% for Option Package III, of the Account's average daily net assets. The Contracts also provide for a charge of $25 for each transfer of contract value in excess of 12 transfers per contract year. RLNY and Golden American currently anticipate waiving this charge for the foreseeable future. Lastly, the Contracts have a surrender charge in the form of a contingent deferred sales charge.

9. The contingent deferred sales charge (''CDSC'') is equal to the percentage of each premium payment surrendered or withdrawn. The CDSC is separately calculated and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn. The CDSC applicable to each premium payment diminishes as the payment ages.

The Account NY–B Contract schedule is as follows:

Number of full years since payment of each premium	Charge (in percent)
less than 1	6.0
2	6.0
3	6.0
4	6.0
5	5.0
6	4.0
7	3.0
8+	0.0

The Account B Contract schedule is as follows:

Number of full years since payment of each premium	Charge (in percent)
less than 1	7.0
2	7.0
3	6.0
4	6.0
5	5.0
6	4.0
7	3.0
8+	0.0

10. No CDSC applies to contract value representing an annual free withdrawal amount or to contract value in excess of aggregate premium payments (less prior withdrawals of premium payments) (''earnings''). The CDSC is calculated using the assumption that premium payments are withdrawn on a first-in, first-out basis. The CDSC also is calculated using the assumption that contract value is withdrawn in the following order: (1) The annual free withdrawal amount for that contract year, (2) premium payments, and (3) earnings. The annual free withdrawal amount is 10% of contract value, measured at the time of withdrawal, less any prior withdrawals made in that contract year. Under Option Package III, any unused percentage of the 10% free withdrawal amount from a contract year may carry forward into successive contract years, based on the percentage remaining after the last withdrawal in a contract year. However, under Option Package III, the accumulated free withdrawal amount may not exceed 30% of contract value.

11. 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 RLNY or Golden American, as applicable, 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. Under the Account NY–B Contracts, the death benefit options available under the option packages include:

(1) The Standard Death Benefit which equals return of premium, less credits applied since or within 12 months prior to death, reduced pro rata for withdrawals;

(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 which equals the maximum contract value on each contract anniversary occurring on or prior to attainment of age 90, adjusted for new premiums and credits and reduced pro rata for withdrawals, less credits applied since or within 12 months prior to death; and

(4) return of premium.

Under Option Package I, the death benefit payable is the greater of (1), (2) and (4). Under Option Package II, the death benefit payable is the greatest of (1), (2), (3) and (4). Under Option Package III, the death benefit payable is the greatest of (1), (2), (3) and (4).

Under the Account B Contracts, the death benefit options available under the option packages include:

(1) The Standard Death Benefit which equals return of premium, less credits applied since or within 12 months prior to death, reduced pro rata for withdrawals;

(2) the contract value on the claim, less credits applied since or within 12 months prior to death;

(3) the Annual Ratchet death benefit which equals the maximum contract value on each contract anniversary occurring on or prior to attainment of age 90, adjusted for new premiums and credits and reduced pro rata for withdrawals, less credits applied since or within 12 months prior to death;

(4) the 5% Roll-Up death benefit which equals the lesser of premiums, plus credits, if applicable, adjusted for withdrawals and transfers, accumulated at 5% for Covered Funds or Excluded Funds and 0% for Special Funds until the earlier of attainment of age 90 or reaching the cap (equal to 3 times all premium payments and credits, if applicable, as reduced by adjustments for withdrawals) and thereafter at 0%, and the cap.

Under Option Package I, the death benefit payable is the greater of (1) and (2). Under Option Package II, the death benefit payable is the greatest of (1), (2) and (3). Under Option Package III, the death benefit payable is the greatest of (1), (2), (3) and (4).

12. RLNY and Golden American intend to offer a bonus credit provision under the Contracts. At the time of application, an owner may elect the bonus credit provision. Under the bonus credit provision, RLNY or Golden American, as applicable, credits contract value in the subaccounts and the fixed-interest allocations with an amount that is a percentage of the premium payment. The bonus credit applies upon issuance of the Contract and is based upon premium payments received within the first contract year (''first year premium payments''). RLNY or Golden American, as applicable, allocates the bonus credit among the subaccounts and fixed-interest allocations the owner selects in proportion to the premium payment in each investment option. The bonus credit equals 4% of the first year premium payments. The annual charge assessed for the premium credit rider (as a percentage of contract value) is 0.50%. The charge is payable for the first seven contract years. The charge is deducted from the contract value in the subaccounts and is also deducted from amounts in fixed interest allocations by crediting a lower interest rate.

13. Under the bonus credit provision, RLNY or Golden American, as applicable, recaptures or retains the credited amount in the event that the owner exercises his or her cancellation right during the ''free look'' period. RLNY or Golden American, as applicable, recaptures bonus credits applied after or within twelve months of the date as of which a death benefit is computed. RLNY or Golden American, as applicable, also will recapture part or all of the credited amount upon surrender or withdrawal. The portion of the credit deducted is based on the percentage of first year premium withdrawn and the contract year of surrender or withdrawal. The amount recaptured is calculated separately and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn. The recapture percentage applicable to each premium payment is level for the first two contract years and diminishes to zero after the seventh contract year. The schedule is as follows:

Contract year of surrender or withdrawal	Percentage of premium credit forfeited (based on percentage of first year premium withdrawn)
Years 1–2	100
Years 3–4	75
Years 5–6	50
Year 7	25
Years 8+	0

14. No recapture percentage applies to contract value representing the annual free withdrawal amount or to contract value representing earnings. Because of the recapture provisions discussed above, the value of a credit only ''vests'' or belongs irrevocably to the owner as the recapture period for the credit expires. As to bonus credits resulting from premiums paid before the ''free look'' period ends, no part of the credit vests for the owner until the expiration of the ''free look'' period. After the expiration of the ''free look'' period, all bonus credits vest in full over the 7-year period after RLNY or Golden American, as applicable, grants them. Under the bonus credit provision, RLNY or Golden American, as applicable, 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.

15. 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 the Account) that RLNY or Golden American, as applicable, can ''recapture'' increases as variable contract value (or the owner's interest in the Account) decreases. This dilutes somewhat the owner's interest in the Account vis-a-vis RLNY or Golden American, as applicable, and other owners, and in his or her variable contract value vis-a-vis RLNY or Golden American, as applicable. Lastly, because it is not administratively feasible to track the unvested value of bonus credits in the Account, RLNY or Golden American, as applicable, 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.

16. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the Act, adding Additional Applicants as parties to the Existing Order, and granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit Additional Applicants to recapture bonuses under Contracts under the same circumstances covered by the Existing Order.

Legal Analysis

1. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account supporting 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 the ''* * * contract is a redeemable security; and * * * [t]he insurance company complies with Section 26(e) * * *''

2. 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.

3. 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 as of which such amount 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.

4. 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 purposes fairly intended by the policy and provisions of the Act.

5. Applicants submit that the recapture of bonus credits would not, at any time, deprive an owner of his or her proportionate share of the current net assets of an Account. Until the appropriate recapture period expires, RLNY and Golden American retain the right to and interest in each owner's contract value representing the dollar amount of any unvested bonus credits. Therefore, if RLNY or Golden American recaptures any bonus credit or part of a bonus credit in the circumstances described above, it would merely be retrieving its own assets. RLNY and Golden American would grant bonus credits out of their respective general account assets and the amount of the credits (although not the earnings on such amounts) would remain RLNY's or Golden American's until such amounts vest with the owner. Thus, to the extent that RLNY or Golden American may grant and recapture bonus credits in connection with variable contract value, it would not, at either time, deprive any owner of his or her then proportionate share of the Account's assets. It is the nature of the bonus recapture provisions as they apply to variable contract value that an owner would obtain a benefit from a bonus credit in a rising market because any earnings on the bonus credit amount would vest with him or her immediately. Over time this would, of course, cause the owner's share of both the Contract's variable contract value and the Account's net assets to be greater on a relative basis than it would have been without the bonus credit. Conversely, in a falling market an owner would suffer a detriment from a bonus credit because losses on the bonus credit amount also would ''vest'' with him or her immediately. As explained above, over time this would cause the owner's share of both the Contract's variable contract value and the Account's net assets to decrease on a relative basis.

6. Applicants do not believe that the dynamics of RLNY's or Golden American's proposed bonus credit provisions would violate Sections 2(a)(32) or 27(i)(2)(A) of the Act. To begin with, Section 2(a)(32) defines a redeemable security as one ''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 asset value.'' Taken together, these two sections of the Act do not require that the holder receive the exact proportionate share that his or her security represented at a prior time. Therefore, the fact that the proposed bonus credit provisions have a dynamic element that may cause the relative ownership positions of RLNY or Golden American and a Contract owner to shift due to Account performance and the vesting schedule of such credits, would not cause the provisions to conflict with Sections 2(a)(32) or 27(i)(2)(A). Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from these two sections.

7. RLNY's or Golden American's granting of a bonus credit would have the result of increasing an owner's contract value in a way that could be viewed as the purchase of an interest in the Account at a price below net asset value. Similarly, RLNY's or 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. If such is the case, then the bonus credit provisions could be viewed as conflicting with Rule 22c–l under the Act. Applicants contend, however, that the bonus credits do not violate Rule 22c–1 under the Act. The 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.''

8. 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. The proposed bonus credit provisions pose no such threat of dilution. 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. The granting of a bonus credit does not reflect a reduction of that price. Instead, RLNY or Golden American will purchase with their own money on behalf of the owner, an interest in the Account equal to the bonus credit. Because any bonus credit will be paid from RLNY's or Golden American's general account and not from the assets of the Account, no dilution will occur as a result of the credit. Likewise, because RLNY or Golden American will use general account assets to increase an owner's total contract value, no dilution will occur from such an increase.

9. Recaptures of bonus credits result in a redemption of RLNY'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 RLNY or 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. Because neither of the harms that Rule 22c–1 was intended to address arise in connection with the proposed bonus credit provisions, the provisions do not conflict with the Rule. Nonetheless, in order to avoid any uncertainty as to hill compliance with the Act, Applicants seek exemptions from Rule 22c–1.

10. The bonus credit recapture provisions are necessary for RLNY or Golden American to offer the bonus credits. It would be unfair to RLNY or 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, the owner could obtain a quick profit in the amount of the bonus credit at RLNY's or Golden American's expense by exercising that right. Similarly, the owner could take advantage of the bonus credit by taking withdrawals within the recapture period, because 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 (or annuitant), a death shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at RLNY's or Golden American's expense. In the event of such profits to owners or beneficiaries, RLNY or Golden American could not recover the cost of granting the bonus credits. This is because RLNY and Golden American intend to recoup the costs of providing the bonus credits through the charges under the Contract, particularly the daily mortality and expense risk charge and the daily administrative charge. If the profits described above are permitted, certain owners could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount of bonus credits that RLNY or Golden American must provide. Therefore, the recapture provisions are a price of offering the bonus credits. RLNY and Golden American simply cannot offer the proposed bonus credits without the ability to recapture those credits in the limited circumstances described herein.

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, RLNY'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. 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. As discussed below, 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 Account B 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 submit that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

Based on the grounds summarized above, Applicants submit that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested 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 Act, and that, therefore, the Commission should grant the requested order.

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

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48201; File No. SR–GSCC–2002–10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change To Establish a Comprehensive Standard of Care and Limitation of Liability to its Members

July 21, 2003.

I. Introduction

On October 10, 2002, the Government Securities Clearing Corporation (''GSCC'') [1] filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–GSCC–2002–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposal was published in the **Federal Register** on January 14, 2003.[3] The Commission received two comment letters in response to the proposed rule change.[4] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of GSCC's rule change is to establish a comprehensive standard of care and limitation of liability with respect to its members. Historically, the Commission has left to user-governed clearing agencies the question of how to

[1] On January 1, 2003, MBS Clearing Corporation (''MBSCC'') was merged into the Government Securities Clearing Corporation (''GSCC'') under New York law, and GSCC was renamed the Fixed Income Clearing Corporation (''FICC''). The functions previously performed by GSCC are now performed by the Government Securities Division (''GSD'') of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division (''MBSD'') of FICC. The GSD succeeded to the GSCC proposed rule change upon the merger of MBSCC and GSCC. To avoid confusion and maintain consistency with the Notice, in this Order, we will continue to refer to GSCC instead of the GSD of FICC. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 [File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01].

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 47135 (January 7, 2003), 68 FR 1876.

[4] Letters from Dan W. Schneider, Counsel to the Association of Global Custodians (''AGC'') (March 24, 2003) and Jeffrey F. Ingber, Managing Director, General Counsel, and Secretary, Fixed Income Clearing Corporation (June 12, 2003).