

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8832 / August 9, 2007

SECURITIES EXCHANGE ACT OF 1934
Release No. 56229 / August 9, 2007

INVESTMENT COMPANY ACT OF 1940
Release No. 27925 / August 9, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12720

In the Matter of

**GENERAL AMERICAN LIFE
INSURANCE COMPANY AND
WILLIAM C. THATER,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER PURSUANT TO SECTION 8A OF
THE SECURITIES ACT OF 1933,
SECTIONS 15(b) AND 21C OF THE
SECURITIES AND EXCHANGE ACT OF
1934, AND SECTIONS 9(b) AND 9(f) OF
THE INVESTMENT COMPANY ACT OF
1940**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities and Exchange Act of 1934 (“Exchange Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against William C. Thater and pursuant to Section 8A of the Securities Act and Sections 9(b) and 9(f) of the Investment Company Act against General American Life Insurance Company.

II.

In anticipation of the institution of these proceedings, William C. Thater and General American Life Insurance Company (“Respondents”) have submitted Offers of

Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities and Exchange Act of 1934 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds that:

Respondents

1. **General American Life Insurance Company (“General American”)** is a St. Louis based insurance company offering, among other things, life and variable insurance products to consumers. General American is a wholly-owned subsidiary of GenAmerica Financial Corporation which is a subsidiary of MetLife, Inc., a public company and one of the world’s largest financial services companies.

2. **William C. Thater (“Thater”)** is a 52 year-old resident of Danbury, Connecticut. During the time of the conduct, Thater was a senior vice-president in charge of the sale of General American’s private placement variable insurance products. Thater was also a registered representative associated with General American Distributors. Thater holds NASD Series 7 and Series 63 licenses. On November 3, 2003, Thater was terminated from General American as a result of the late trading arrangement discussed herein.

Overview

3. From January 2002 through November 2002 (“the relevant period”), Thater permitted and General American failed to prevent late trading of underlying mutual funds that were offered through General American’s private placement variable universal life insurance (“PPVUL”) policies. Specifically, on January 31, 2002, Thater entered into a written agreement, on General American letterhead, that gave a New York family exclusive late trading privileges in the mutual funds underlying the PPVUL policies that the family purchased for approximately \$20 million in premium. During the relevant period, the New York family placed numerous trade requests, 79 of which they submitted, confirmed and/or cancelled after 4:00 p.m. ET. As a result of the New York family’s late trading, the value of the underlying mutual funds was diluted by approximately \$3.3 million.

Late Trading

4. “Late trading” is the transmission, placement, confirmation, or cancellation of orders to purchase or redeem mutual fund shares after 4:00 p.m. ET on a given day to be filled at the fund’s net asset value (“NAV”) calculated that same day. The daily price of mutual fund shares is generally calculated as of 4:00 p.m. ET. Orders to buy, sell or exchange mutual fund shares placed at or before 4:00 p.m. ET on a given day receive that day’s NAV. Conversely, orders placed after 4:00 p.m. ET are supposed to be priced using the following trading day’s NAV.

Private Placement Variable Universal Life Insurance Policies

5. PPVUL policies are unregistered securities that are to be sold only to sophisticated investors that meet certain minimum net worth requirements. PPVUL policies have both life insurance and investment components. With respect to the life insurance component, beneficiaries receive an income tax-free death benefit upon the death of the insured. With respect to the investment component, the policies accumulate income tax-free cash value through the investment of insurance premiums in the insurance company’s segregated investment accounts known as “separate accounts.” Through the separate accounts, which are also unregistered, PPVUL policyholders have access to a variety of underlying investment options, including mutual funds available only to investors in variable products. Such funds may have names similar to retail mutual funds and may be similarly managed. To invest in an underlying mutual fund, policyholders place transfer orders with the insurance company. On a daily basis, transfer orders for each fund are aggregated and a single omnibus order is transmitted to the mutual fund complex. The amount of the policy’s death benefit and cash value are directly related to the performance of the underlying investments.

6. The PPVUL policies that General American issued to the New York family were sold through private placement memoranda (“PPMs”). PPMs are similar to prospectuses in that they address details concerning the allocation of premiums, expenses and fees charged, calculation of death benefits, loan privileges and the mechanics of transfers between investment options. In addition to PPMs, the New York family also received and signed insurance contracts that described the benefits to be provided under the insurance policies.

Thater Negotiated and Executed the Late Trading Agreement with the New York Family

7. In late 2001, the New York family asked Thater if General American would allow them to late trade mutual funds that participated in General American’s PPVUL policies. On January 31, 2002, Thater and the New York family entered into a written agreement (“Agreement”) on General American letterhead that provided the New York family with late trading privileges in the PPVUL policies they would thereafter purchase from General American.

8. Specifically, the trading privileges in the agreement included the ability to place transfer orders to buy or sell underlying mutual funds on each and every trading day until 5:30 p.m. Any purchase or redemption requests received prior to 5:30 p.m. would be deemed by General American to have been received prior to 4:00 p.m. and would get that day's unit price. This privilege was not to be made available to any other policyholder.

9. Following the execution of the Agreement, the New York family purchased PPVUL policies for which they paid General American approximately \$20 million in premiums. The New York family was required to pay a \$15,000 fee for the special trading privileges. General American issued the policies and the family began to trade. Between February 1, 2002 and November 18, 2002, seventy-nine of the New York family's transfer orders were late because they were either submitted, confirmed and/or cancelled after 4:00 p.m. ET. As a result of the New York family's late trading, the values of the subaccount mutual funds were diluted by approximately \$3.3 million.

**Thater Knew that Late Trading Was Not Permitted in
the Mutual Funds that Participated in the PPVUL Policies**

10. In January 2002, Thater negotiated, approved, and executed the Agreement allowing the New York family to submit trades after 4:00 p.m. ET.

11. In February 2002, soon after the policies were issued to the New York family, they began to late trade. Thater was aware that the New York family was engaging in this type of trading.

12. Within a week of the family's first trades, General American detected the family's late trading activities. General American's in-house counsel contacted Thater and told him to halt this conduct. However, despite this instruction, Thater made efforts to perpetuate the late trading activity. Specifically, in March 2002, Thater changed the New York family's trading arrangement to a "confirm or cancel" method where they would place trade orders before 4:00 p.m. ET but could confirm or cancel these trades after 4:00 p.m. ET. Thater continued to permit this "confirm or cancel" trading method after General American's in-house counsel advised him in late April 2002 that this method of trading would also violate the federal securities laws. Like post-4 p.m. trading, the confirm/cancel method allowed the New York family to consider post-4 p.m. market information when making their trading decisions.

13. Thater benefited from the sale of PPVUL policies to the New York family. The \$20 million in life insurance policies Thater sold to the New York family represented about 50% of General American's PPVUL business for 2002. As a result of all of his sales, Thater received a salary bonus of \$130,000. This bonus was \$110,000 more than he received in bonus compensation for the previous year when Thater's PPVUL sales were much lower.

Certain General American Personnel Discovered the New York Family Arrangement But Their Efforts to Address the Late Trading Activity Were Insufficient

14. During the relevant period, certain General American personnel became aware of the Agreement and/or the New York family's late trading activity. While these employees at times told Thater to halt the activity, they failed to take adequate steps to investigate the activity and ensure that the late trading ceased.

15. The General American compliance officer responsible for overseeing General American's PPVUL business discovered the Agreement while the New York family was late trading, and thereafter sent a memorandum to Thater expressing concern over the special trading privileges arrangement. The compliance officer, however, never received a response from Thater and did not follow-up with Thater.

16. Further, a General American assistant vice-president in the company's operations department, which was responsible for providing administrative support for Thater's PPVUL department, was shown a draft of the Agreement before it was issued to the New York family. Moreover, after the policies became effective, the assistant vice-president also learned that General American's in-house counsel had determined that late trading was illegal. However, the operations department continued to assist with processing the New York family's trades and the assistant vice-president merely asked other General American employees to confer with Thater on this issue. He took insufficient steps to investigate the activities and ensure that any late trading ceased.

17. In addition, certain General American lawyers became aware at various times of the New York family's late trading activities. While these General American lawyers told Thater to halt the late trading, they later received red flags indicating that Thater was trying to perpetuate the New York family's late trading activity by proposing different arrangements, such as the confirm or cancel method.

General American's PPVUL Product Did Not Permit Late Trading

18. General American entered into participation agreements with the mutual fund companies that were offered through its PPVUL product. In certain participation agreements with the subaccount mutual funds, General American warranted that it would send orders for processing that were received before 4:00 p.m. ET or in accordance with mutual fund prospectuses, which did not permit late trading.

19. While making the above representations, Thater permitted the New York family to engage in late trading and General American did not take adequate steps to halt this activity.

Violations

20. As a result of the conduct described above, Thater willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange

Act and Rule 10b-5 thereunder. General American willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

21. As a result of the conduct described above, General American and Thater caused and willfully aided and abetted violations of Rule 22c-1 of the Investment Company Act by certain mutual funds, persons designated in such funds' prospectuses as authorized to consummate transactions in any such security, their principal underwriters, or dealers in the funds' securities, which requires such persons to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to buy or redeem.

Cooperation and Undertakings

22. In determining to accept General American's Offer, the Commission considered remedial acts promptly undertaken by General American and cooperation afforded to the Commission staff. General American shall continue to cooperate fully with the Commission in any and all investigations, litigation, or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, General American has undertaken:

- a. to produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission's staff;
- b. to use their best efforts to cause their employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- c. to use their best efforts to cause their employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and
- d. that in connection with any testimony of General American to be conducted by the staff of the Commission at deposition, hearing or trial pursuant to a notice or subpoena, General American:
 - i. agrees that any such notice or subpoena for General American's appearance and testimony may be served by regular mail on its attorney, Neil S. Lang, Sutherland Asbill & Brennan, 1275 Pennsylvania Avenue N.W., Washington D.C. 20004-2415; and
 - ii. agrees that any such notice or subpoena for General American's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

General American also undertakes to:

23. Distribution Plan.

1. Within 90 days of the entry of the Order, General American shall develop a Distribution Plan to distribute fairly and proportionately to the affected mutual funds the total disgorgement and civil penalty described in Section IV.B and E. below. In developing the Distribution Plan, General American shall consult with the advisor for each affected mutual fund, or any successor fund. General American shall provide the advisor with (a) a copy of the Order, (b) the proposed amount of disgorgement and civil penalty to be paid to the affected mutual fund, and (c) a description of the methodology used to calculate that amount.
2. Within 120 days of the entry of this Order, General American shall provide to the Commission staff a copy of the Distribution Plan.
3. Within 150 days of the entry of the Order, General American shall, subject to approval of the Commission staff, submit the Distribution Plan to the Commission for the administration and distribution of disgorgement and civil penalty pursuant to Rule 1101 of the Commission's Rules of Practice.
4. Following a Commission order approving the final Distribution Plan, as provided in Rule 1104 of the Commission's Rules of Practice, General American shall take all necessary and appropriate steps to administer the final Distribution Plan including overseeing the actual distribution of the disgorgement and civil penalty to the affected mutual funds within 30 days of the Commission's approval of the Distribution Plan.
5. Within 10 days of the distribution of the disgorgement and civil penalty to the affected mutual funds, General American shall provide a written certification and proof of payment to the Commission staff of the amount paid to each affected mutual fund and the date of the payment.
6. General American shall bear the costs of administering and implementing the final Distribution Plan.

24. **Independent Compliance Consultant.**

- a) General American¹ shall retain, within 90 days of the date of entry of the Order, the services of an Independent Compliance Consultant not unacceptable to the staff of the Commission. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by General American. General American shall employ the Independent Compliance Consultant to:
- (a) conduct a review to determine whether the supervisory and compliance policies and procedures (“Policies and Procedures”) that General American has adopted and implemented to address the conduct described in this Order are reasonably designed to detect and prevent any future late trading in any of its products; (b) determine whether and to what extent there is a need for additional or amended supervisory and compliance Policies and Procedures to detect and prevent late trading; and (c) recommend that General American adopt such additional or amended supervisory and compliance Policies and Procedures which the Independent Compliance Consultant believes are necessary to provide reasonable assurance that General American can detect and prevent late trading. General American shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to its files, books, records, and personnel as reasonably requested for the review.
- b) General American shall require that, at the conclusion of the review, which in no event shall be more than 120 days after the date of entry of the Order, the Independent Compliance Consultant shall submit a Report to General American, its board of directors, and the staff of the Commission regarding the adequacy of the Policies and Procedures. The Report shall include a description of the review performed, the conclusions reached and, if necessary, the Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures of General American, and a procedure for implementing the recommended changes in or improvements to the Policies and Procedures.
- c) General American shall adopt all recommendations contained in the Report of the Independent Compliance Consultant; provided, however, that within 60 days after the date of the submission of the Report (“Report Date”), General American shall in writing advise the Independent Compliance Consultant, its board of directors and the staff of the Commission of any recommendations that they consider to be unnecessary or inappropriate. With respect to any

¹ For purposes of paragraph 24, “General American” shall mean General American Life Insurance Company and its subsidiaries.

recommendation that General American considers unnecessary or inappropriate, General American need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

- d) As to any recommendation with respect to which General American and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 120 days of the Report Date. In the event General American and the Independent Compliance Consultant are unable to agree on an alternative proposal, General American will abide by the determinations of the Independent Compliance Consultant.
- e) One year from the Report Date, General American shall submit an affidavit to the Commission staff stating that it has implemented any and all actions recommended or agreed to by the Independent Consultant, or explaining the circumstances under which it has not implemented such actions.
- f) General American (i) shall not have the authority to terminate the Independent Compliance Consultant, without the prior written approval of the staff of the Commission; (ii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to its board of directors or the Commission.
- g) General American shall require the Independent Compliance Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with General American, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Compliance Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Compliance Consultant in performance of his/her

duties under this Order shall not, without prior written consent of the Midwest Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with General American, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

25. **Record Keeping.** General American shall preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of General American's compliance with the undertakings set forth above.

26. **Continuing Application of Undertakings.** The undertakings of General American herein shall continue to apply respectively to General American or its successors for as long as General American or its successors continue to offer and sell securities or until an undertaking terminates according to its terms; provided, however, that any successor to General American may petition the Commission and obtain relief from such undertakings if the successor can demonstrate that it has sufficient controls and procedures reasonably designed and implemented to detect and prevent the occurrence of the conduct summarized herein.

27. **Deadlines.** For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions in the Offers submitted by the Respondents.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. William Thater shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Rule 22c-1 under the Investment Company Act.

B. William Thater shall, within 7 days of the entry of this Order, pay disgorgement in the amount of \$100,000, prejudgment interest in the amount of \$13,137.49, and a civil money penalty in the amount of \$50,000, for a total of \$163,137.49, to the Securities and Exchange Commission. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-

delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Thater as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert J. Burson, Senior Associate Regional Director, Chicago Regional Office, 175 West Jackson Street, Suite 900, Chicago, Illinois 60604.

C. William Thater be, and hereby is barred from association with any broker or dealer and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, with the right to reapply for association after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission. Any reapplication for association by William Thater will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against William Thater, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. General American shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Rule 22c-1 under the Investment Company Act.

E. General American shall, within 7 days of the entry of this Order, pay disgorgement in the amount of \$1.00 and a civil money penalty in the amount of \$3.3 million to the Securities and Exchange Commission. The payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies General American as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert J. Burson, Senior Associate Regional Director, Chicago Regional Office, 175 West Jackson Street, Suite 900, Chicago, Illinois 60604.

F. It is further ordered that, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement and penalties referenced in Section IV. B and E. above. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be

treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that it should not, after offset or reduction in any Related Investor Action based on Respondents' payment of disgorgement in this action, argue that it shall be entitled to, nor shall it further benefit by offset or reduction of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

G. General American shall comply with the undertakings enumerated in Section III.¶¶ 23-27 above.

By the Commission.

Nancy M. Morris
Secretary