

surrendered or withdrawn during the first five years after the Rider Date, the LRRs' benefits may be more than offset by that charge, and a Contract owner may be worse off if he or she had rejected the LRR.

2. The Offering Document will disclose in concise plain English the only aspect in which adding the LRR rider could disadvantage a Contract owner (*i.e.*, through the possible imposition of the New Schedule of CDSC).

3. A Contract owner choosing to add the LRR will complete and sign the election form, which will prominently restate in concise plain English the statements required in Condition No. 1, and return it to Hartford. If the election form is more than 2 pages long, Hartford will use a separate document to obtain the Contract owner's acknowledgement of the statements referred to in Condition No. 1 above.

4. Applicants will maintain and make available the following separately identifiable records, for the time periods specified below, for review by the Commission upon request: (a) Records showing the level of LRR purchases and how it relates to the total number of Contract owners eligible to acquire the LRR (at least quarterly as a percentage of the number eligible); (b) copies of any form of Offering Document, prospectus disclosure, election form, acknowledgement form, or offering letter, regarding the offering of the LRR including the dates(s) used, and copies of any other written materials or scripts for presentations used by registered representatives regarding the LRR, including dates used; (c) records showing information about each LRR purchase that occurs, including the Contract number; the election form (and separate acknowledgement form, if any, used to obtain the Contract owner's acknowledgement of the statements required in Condition No. 1 above); the date such election or acknowledgement form was signed; the date of birth; address and telephone number of the Contract owner; the issue date of the LRR; the amount of the Contract's value on that date; persistency information relating to the Contract (date of any subsequent CDSCs and CDSC paid); the registered representative's name, CRD number, firm affiliation, branch office address and telephone number; the name of the registered representative's broker-dealer; and the amount of commission paid to the registered representative that relates to the LRR; and (d) logs showing any Contract owner complaints received by it about the LRR, state insurance department inquiries to it about the LRR, or litigation, arbitration or other

proceedings to which it is a party regarding the LRR.

5. Applicants will include the following information on the logs referred to in Condition No. 4(d) above: date of complaint or commencement of proceeding; name and address of the person making the complaint or commencing the proceeding; nature of the complaint or proceeding; and persons names or involved in the complaint or proceeding.

6. Applicants will retain (i) the records specified in Conditions Nos. 4(a) and 4(d) above for six years from creation of the record; (ii) the records specified in Condition No. 4(b) above for six years after the date of last use; and (iii) the records specified in Condition No. 4(c) for seven years from the Rider Date.

### Conclusion

For the reasons discussed above, Applicants assert (1) that the LRR offers substantial benefits to Contract owners, will be advantageous for the majority of owners to whom it will be offered, and does not contravene any policy or purpose of Section 11 and (2) that approval of Applicant's offer of the LRR as described, and subject to the conditions set forth, in the application is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants submit that the requested order should therefore be granted.

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

**Margaret H. McFarland,**  
Deputy Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25221; File No. 812-12464]

#### Golden American Life Insurance Company, et al.

October 23, 2001.

**AGENCY:** The Securities and Exchange Commission ("SEC" OR "Commission").

#### Summary of the Application

Applicants seek an order pursuant to Section 26(b) of the Investment Company Act of 1940 ("1940 Act"), approving substitution of shares of one registered management investment company with shares of another registered management investment company or transfer in-kind of

securities held by one registered management investment company. Applicants also seek an order, pursuant to Section 17(b) of the 1940 Act, granting exemptions from Section 17(a) to permit Applicants to carry out the above-reference substitution by means of in-kind redemption and purchase.

**APPLICANTS:** Golden American Life Insurance Company ("Golden American"), Golden American Life Insurance Company Separate Account B ("Golden Separate Account B"), Equitable Life Insurance Company of Iowa ("Equitable"), Equitable Life Insurance Company of Iowa Separate Account A ("Equitable Separate Account A"), United Life and Annuity Insurance Company ("United"), United Life and Annuity Insurance Company Account One ("United Separate Account One"), and The GCG Trust (the "GCG Trust") (collectively, the "Applicants").

**FILING DATE:** The application ("Application") was filed originally on March 1, 2001. It was subsequently amended and restated on September 26, 2001.

**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 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 November 19, 2001, 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 writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** For the Commission: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. For Applicants: Marilyn Talman, Esquire, Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.

**FOR FURTHER INFORMATION CONTACT:** Alison Toledo, Staff Attorney, or Lorna MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products, at 202-942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the Application. The complete Application

is available for a fee from the Public Reference Branch of the Commission.

### Applicants' Representations

1. Golden American, Equitable and United are stock life insurance companies organized under the insurance laws of Delaware, Iowa, and Texas, respectively. Each is authorized to write variable annuity contracts in at least 47 states and the District of Columbia. Golden American, Equitable and United (collectively, "Applicant Insurance Companies") are wholly owned subsidiaries of ING Groep N.V. ("ING"), a global financial services holding company.

2. Golden Separate Account B, Equitable Separate Account A and United Separate Account One (collectively "Applicant Separate Accounts") are separate accounts for which one of the Applicant Insurance Companies serves as the sponsor and depositor. Golden American serves as sponsor and depositor of Golden Separate Account B; Equitable serves as sponsor and depositor of Equitable Separate Account A; United serves as the sponsor and depositor of United Separate Account One. Each Applicant Separate Account is a segregated asset account of its insurance company sponsor and each is registered under the 1940 Act as a unit investment trust. Each Applicant Separate Account is administered and accounted for as part of the general business of the Applicant Insurance Company of which it is a part. The income, gains or losses of such Separate Accounts are credited to or charged against the assets of each such separate account, without regard to income, gains or losses of such Applicant Insurance Company.

3. Each Applicant Separate Account serves as a funding vehicle for certain variable annuity and/or variable life contracts ("collectively, Variable Contracts") written by the respective Applicant Insurance Companies. Applicant Separate Accounts are divided into separate subaccounts, each dedicated to owning shares of one of the investment options available under the Variable Contracts. The Variable Contracts are structured such that holders of any of the Variable Contracts ("Contractholders") may select one or more of the investment options available under the contract held by allocating premiums payable under such contract to that subaccount of the relevant Applicant Separate Account that corresponds to the investment option desired. Thereafter, Contractholders accumulate funds, on a tax-deferred basis, based on the investment experience of the selected

subaccount(s). Contractholders may, during the life of the contract, make unlimited transfers of accumulation values among the subaccounts available under the contract held, subject to any applicable administrative and/or transfer fees.

4. The Credit Suisse Warburg Pincus Trust, formerly the Warburg Pincus Trust, is registered under the 1940 Act as an open-end, management, series investment company. As of the date of the Application, the Credit Suisse Warburg Pincus Trust offers shares of four separate investment series, which are included in separate prospectuses each dated May 1, 2001.

5. The GCG Trust is registered under the 1940 Act as an open-end, management, series investment company. As of the date of the Application, the GCG Trust offers shares of 27 separate investment series, which are included in prospectuses dated May 1, 2001.

6. Under the terms of an investment advisory agreement between the GCG Trust and Directed Services, Inc. ("DSI") ("Trust Management Agreement"), DSI manages the business and affairs of each of the several series of the Trust, subject to the control of the Board of Trustees. Under the Trust Management Agreement, DSI is authorized to exercise full investment discretion and make all determinations with respect to the investment of the assets of the respective series, but may, at its own cost and expense, retain portfolio managers for the purpose of making investment decisions and research information available to the Trust. DSI has retained ING Pilgrim Investments, Inc. ("ING Pilgrim") as portfolio manager of the International Equity Series of the GCG Trust.

7. Pursuant to the Trust Management Agreement, DSI is responsible for providing the GCG Trust (or arranging and paying for the provision to the Trust) a comprehensive package of administrative and other services necessary for the ordinary operation of certain selected series of the GCG Trust, including the International Equity Series. This fee ("Unified Fee") is calculated for the participating GCG Trust series based on a percentage of assets basis and in accordance with schedules that provide, for some of the GCG Trust series, including the International Equity Series, fee reductions at specified asset levels or "break points."

8. Applicant Insurance Companies have approved a proposal whereby the International Equity subaccounts would substitute securities issued by the International Equity Series of the GCG

Trust for securities issued by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust, and the GCG Trust Board of Trustees has approved the transfer in-kind of portfolio securities from the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust to the International Equity Series of the GCG Trust. Redemptions in kind will be handled in a manner consistent with the investment objectives, policies and diversification requirements of the International Equity Series of the GCG Trust. Consistent with Rule 17a-7(d) under the 1940 Act, no brokerage commissions, fees or other remuneration will be paid by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust, the International Equity Series of the GCG Trust, or Affected Contractholders in connection with the in-kind transactions.

9. Applicants state that although not identical, the investment objective and policies of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust best fit with those of the International Equity Series of the GCG Trust, as opposed to any other GCG Trust series, to assure that the essential objectives of Affected Contractholders can continue to be met. The International Equity Portfolio of the Credit Suisse Warburg Pincus Trust has a primary investment objective of long-term capital appreciation and the International Equity Series of the GCG Trust has a virtually identical primary investment objective of long-term growth of capital. Both portfolios are managed as diversified portfolios as defined under the 1940 Act. The International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and the International Equity Series of the GCG Trust have substantially similar investment strategies of at least 65% of net assets in equity securities of issuers located in countries outside of the United States. Both may be invested significantly in securities of emerging markets. Applicant Insurance Companies have, therefore, concluded that the overall investment objectives of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and the International Equity Series of the GCG Trust are sufficiently similar such that the International Equity Series of the GCG Trust is appropriate for substitution.

10. Applicants state that the Substitution is part of an overall business plan of Applicants to make its products, including the Variable Contracts, more competitive and more efficient to administer and oversee.

Applicants represent that the Substitution is appropriate because it will allow the Applicants to eliminate a portfolio with poor performance and place Contractholders in a position to participate in a portfolio with much better performance and lower overall expenses.

11. Applicants state that, as of the effective date of the Substitution ("Effective Date"), shares of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust held by the applicable subaccounts will be redeemed for cash or in-kind by Applicant Insurance Companies as follows: Applicant Insurance Companies on behalf of the international Equity Division of Applicant Separate Accounts will simultaneously place a redemption request with the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and a purchase order with the International Equity Series of the GCG Trust so that the purchase will be for the exact amount of the redemption proceeds. As a result, monies attributable to Contractholders currently invested in the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust will be fully invested. Applicant Insurance Companies state that the Applicant Insurance Companies or their affiliates will pay all expenses and transactional costs related to the Substitution, including brokerage fees which may arise from sales of portfolio securities by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and purchases of new portfolio investments made by the International Equity Series of the GCG Trust with the proceeds from the Substitution which brokerage fees would normally be borne by the Fund and/or the Series, any legal and/or accounting fees. Affected Contractholders will not incur any additional fees or charges as a result of the Substitution, nor will their rights or the obligations under any of the Variable Contracts diminish in any way. Applicants further state that all redemption of shares of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and purchases of shares of the International Equity Series of the GCG Trust will be effected at net asset value and in accordance with Rule 22c-1 under the 1940 Act.

12. Applicants state that shareholders of the affected Variable Contracts were mailed a prospectus supplement notifying them of the Applicants' filing of the Application. Prior to the Effective Date, each Affected Contractholder will be furnished with a second supplement

setting forth the Effective Date and advising Affected Contractholders of their right to reconsider the Substitution and, if they so chose, at any time prior to the Effective Date, they may reallocate or withdraw amounts under their affected Variable Contract or otherwise terminate their interest thereof in accordance with the terms and conditions of their Variable Contract. All current Contractholders have received a prospectus containing a description of the International Equity Series of the GCG Trust and upon request another copy will be forwarded any Contractholder who requests one. Within five days after the Effective Date, Affected Contractholders will receive a notice ("Substitution Notice") stating that shares of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust have been redeemed and that the shares of the International Equity Series of the GCG Trust have been substituted. The Substitution Notice will include a written confirmation showing the before and after accumulation values (which will not have changed as a result of the substitution) and detailing the transactions effected on behalf of the Affected Contractholder.

#### **Terms of the Substitution**

1. The International Equity Series of the GCG Trust has objectives and policies sufficiently similar to the objectives and policies of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust so that the objective of the Affected Contractholders can continue to be met.

2. The expense ratio of the International Equity Series of the GCG Trust will, immediately following the Effective Date and for a period of at least two years following the Effective Date, not exceed 1.28% of the average daily assets of the GCG Fund, which is 0.02% below the 2000 expense ratio of the Warburg Fund.

3. Affected Contractholders may reallocate, without incurring a reallocation charge or adding to their number of reallocations, or withdraw amounts under any affected variable Contract held or otherwise terminate their interest thereof at any time prior to the Effective Date, or within 30 days after the Effective Date, in accordance with the terms and conditions of such Variable Contract.

4. The Substitution will be effected at the net asset value of the respective shares in conformity with section 22(c) of the 1940 Act and Rule 22c-1 thereunder, without the imposition of any transfer or similar charge by Applicants.

5. The Substitution will take place at respective net asset value without change in the amount or value of any Variable Contract held by Affected Contractholders. Affected Contractholders will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of Applicant Insurance Companies under such Variable Contracts be altered in any way. In addition, the Applicant Insurance Companies will not increase the Contract fees and charges currently being assessed by the Variable Contracts for a period of at least two years following the Substitutions.

6. The Substitution will be effected so that investment of securities will be consistent with the investment objectives, policies and diversification requirements of the International Equity Series of the GCG Trust. The International Equity Series of the GCG Trust will not be responsible for any brokerage commissions and fees for purchase of investments for the portfolio, except for those fees and commissions from purchase or sales of investment securities not directly related to the Substitution. No brokerage commissions, fees or other remuneration will be paid by the International Equity Series of the GCG Trust or the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust or Affected Contractholders in connection with the Substitution.

7. Neither the Substitution nor the subsequent transactions will alter in any way the annuity, life or tax benefits afforded under the Variable Contracts held by any Affected Contractholder.

8. Applicant Insurance Companies will send to its Affected Contractholders within five (5) business days of the Substitution a copy of the Substitution Notice which will include a written confirmation showing the before and after accumulation values (which will not have changed as a result of the Substitution) and detailing the transactions effected on behalf of the respective Affected Contractholder with regard to the Substitution.

#### **Applicants' Legal Analysis**

1. Section 26(b) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(b) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of

investors and the purposes of the 1940 Act.

2. Applicants request an order pursuant to section 26(b) of the 1940 Act approving the Substitution and related transactions. Applicants assert that the purposes, terms, and conditions of the proposed Substitution and related transactions are consistent with the protection of investors and the purposes fairly intended by the 1940 Act. Applicants further assert that the Substitution will not result in the type of costly forced redemption against which section 26(b) was intended to guard.

3. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above, from purchasing any security or other property from such registered investment company.

4. If Substitution is effected through an in-kind transfer of securities from the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust to the International Equity Series of the GCG Trust through transfers to and from the Separate Accounts, the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust could be said to be selling portfolio securities to an affiliate and the International Equity Series of the GCG Trust could be said to be purchasing portfolio securities from an affiliate.

5. Applicants request an order pursuant to section 17(b) of the 1940 Act exempting said redemptions and purchases or the in-kind transfer of portfolio securities from the provision of section 17(a) of that Act. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from section 17(a) if evidence establishes that; (i) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the investment policy of each registered investment company concerned; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act.

6. Applicants represent that the terms of the redemptions and purchases or the in-kind transfer are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interest of Contractholders will not be diluted. The redemptions and

purchases or the in-kind transfer will be done at values consistent with the policies of both the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and the International Equity Series of the GCG Trust. Applicant Insurance Companies and DSI will review all asset transfers to assure that the assets meet the objectives of the International Equity Series of the GCG Trust and that they are valued under the appropriate valuation procedures of the Series. The Applicants represent that the transactions are consistent with Rule 17a-7(d) under the 1940 Act, no brokerage commissions, fees or other remuneration will be paid by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust or the International Equity Series of the GCG Trust or Affected Contractholders in connection with the transactions, and that the transactions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of section 17(b) of the 1940 Act.

7. Applicants represent that the purchase and sale transactions described in the Application will be effected based on the net asset value of the investment company shares held in the subaccounts and the value of the units of the subaccount involved. Therefore, there will be no change in value to any Contractholder.

#### Applicants' Conditions

The Substitution and related transactions described in the Application will not be completed unless all of the following conditions are met.

1. The Commission shall have issued an order (i) approving the Substitution under section 26(b) of the 1940 Act; and (ii) exempting the in-kind redemptions from the provisions of section 17(a) of the 1940 Act as necessary to carry out the transactions described in this Application.

2. Each Affected Contractholder will have been sent a copy of (i) a supplement informing shareholders of the Application; (ii) a prospectus for the International Equity Series of the GCG Trust; and (iii) a second supplement setting forth the Effective Date and advising Affected Contractholders of their right to reconsider the Substitution and, if they so choose, any time prior to the Effective Date, they may reallocate or withdraw amounts under their affected Variable Contract or otherwise terminate their interest thereof in accordance with the terms and conditions of their variable Contract.

3. Applicant Insurance Companies shall have satisfied themselves, that (i) the Variable Contracts allow the substitution of investment in the manner contemplated by the Substitution and related transactions described herein; (ii) the transactions can be consummated as described in this Application under applicable insurance laws; and (iii) that any regulatory requirements in each jurisdiction where the Variable Contracts are qualified for sale, have been complied with to the extent necessary to complete the transactions.

Within five business days of the Effective Date of the Substitutions, the Applicants will forward to Affected Contractholders a copy of the Substitution Notice.

#### Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and related transactions involving redemptions should be granted.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44971; File No. SR-BSE-2001-06]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Amending the Transaction Fee Schedule and the Floor Operations Fee Schedule

October 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 29, 2001, the Boston Stock Exchange ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.