

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,⁴⁴ that the proposed rule change (SR-Phlx-94-49) is approved, as amended.⁴⁵ Furthermore, the portion of the rule change relating to spread margin treatment is approved on a one year pilot program basis, effective from the date of this Order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-22106 Filed 9-6-95; 8:45 am]

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[Rel. No. IC-21330; File No. 812-9468]

Keyport Life Insurance Company, et al.

August 31, 1995.

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

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

APPLICANTS: Keyport Life Insurance Company ("Keyport"), KMA Variable Account ("KMA Account"), Keyport Variable Account I ("Variable Account I"), Independence Life and Annuity Company (formerly, Keyport America Life Insurance Company, "Keyport America"),¹ Independence Variable Annuity Separate Account (formerly, Keyport America Variable Annuity Separate Account, "KA VA Account"), Independence Variable Life Separate Account (formerly, Keyport America Variable Life Separate Account, "KA VLI Account"), Liberty Life Assurance Company of Boston ("Liberty Life") and Variable Account-K ("Account K").

RELEVANT 1940 ACT SECTIONS: Approval requested under Section 26(b) and exemption requested under Section 17(b) from Section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the Managed Assets Fund ("MAF") for shares of the Strategic Managed Assets Fund ("SMAF"), each of which is a portfolio of SteinRoe

Variable Investment Trust ("SteinRoe Trust"); shares of SteinRoe Trust's Mortgage Securities Income Fund ("MSIF") for shares of the Colonial-Keyport U.S. Government Fund ("USGF") of Keyport Variable Investment Trust ("Keyport Trust"); and shares of Keyport Trust's Colonial-Keyport Strategic Income Fund ("SIF") for shares of SteinRoe Trust's Managed Income Fund ("MIF") (the "Substitution").

FILING DATE: The application was filed on February 6, 1995 and amended on August 30, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Commission's Secretary and serving 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 September 25, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the 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. Applicants, c/o James Klopper, Esq., Keyport Life Insurance Company, 125 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Keyport is a stock life insurance company and an indirect majority-owned subsidiary of Liberty Mutual Insurance Company ("Liberty Mutual"). Among Liberty Mutual's other indirect subsidiaries are the investment advisory firm of SteinRoe & Farnham Incorporated ("SteinRoe"), which is the adviser to SteinRoe Trust, and Keyport Advisory Services Corp. ("Keyport Advisory"), which is the adviser to Keyport Trust. Keyport offers fixed individual life insurance and individual

and group fixed and variable immediate and deferred annuity contracts on a non-participating basis. Keyport currently is not offering new variable life insurance policies.

2. Keyport America is a stock life insurance company and a wholly-owned subsidiary of Keyport. Keyport America is authorized to transact life insurance and annuity business in all states, except New York, and in the District of Columbia. Keyport America is not currently offering new variable annuity contracts or variable life insurance policies.

3. Liberty Life is a stock life insurance company and a wholly-owned subsidiary of Liberty Mutual and Liberty Mutual Fire Insurance Company. Liberty Life offers individual life insurance and group life and health insurance and individual and group annuity contracts.

4. MAF, MSIF and SIF (collectively, "Substitute Funds") and SMAF, USGF and MIF, together with other portfolios of SteinRoe Trust and Keyport Trust, serve as eligible funding vehicles ("Eligible Funds") for certain flexible premium variable annuity contracts ("Contracts") offered by KMA Account and Account-K and previously offered by KA VA Account and certain single premium variable life insurance policies ("Policies") previously offered by Variable Account I and KA VLI Account (collectively, "Accounts").

5. The Accounts are segregated investment accounts registered under the 1940 Act as unit investment trusts. Each Account is divided into sub-accounts ("Sub-accounts") each of which invests in the corresponding portfolio of SteinRoe Trust (including MAF, SMAF, MSIF, and MIF), or Keyport Trust (including USGF and SIF). KMA Account serves as the funding medium for certain variable annuity Contracts issued and administered by Keyport. Variable Account I was established to fund certain individual single premium variable life insurance Policies previously offered by Keyport. KA VA Account was established to fund certain variable annuity Contracts previously offered by Keyport America. KA VLI Account was established to fund certain individual single premium variable life insurance Policies previously offered by Keyport America. Account-K serves as the funding medium for certain variable annuity Contracts issued and administered by Liberty Life. Keyport Financial Services Corp., a subsidiary of Keyport, serves as principal underwriter for the Contracts and Policies.

6. The Contracts offered by KMA Account and the Contracts previously

⁴⁴ 15 U.S.C. § 78s(b)(2) (1988).

⁴⁵ The Commission notes that prior to listing any stock index, currency or currency index warrants, the Exchange will be required to obtain approval from the staff of the Commission concerning the Exchange's surveillance procedures applicable to the trading of warrants.

⁴⁶ 17 CFR § 200.30-3(a)(12) (1994).

¹ Keyport America Variable Life Insurance Company changed its name on July 13, 1995. To avoid confusion and effect a smooth transition, the company and its separate accounts may continue to use the name "Keyport America" for a period of time.

offered by KA VA Account provide for allocation to the Sub-accounts that invest in each of the portfolios of SteinRoe Trust and each of the portfolios of Keyport Trust. The Contracts offered by Account-K provide for investment in the Sub-Accounts that invest in each of the portfolios of SteinRoe Trust and five of the portfolios of Keyport Trust, including USGF and SIF. Keyport America is not actively offering the Contracts funded through KA VA Account.

7. The Policies previously offered by Variable Account I and by KA VLI Account provide for allocation to the Sub-accounts that invest in each of the portfolios of SteinRoe Trust and each of the portfolios of Keyport Trust. Neither Keyport nor Keyport America is actively offering the Policies funded through Variable Account I or KA VLI Account, respectively.

8. Established in connection with the sale of Keyport to Liberty Mutual by the Travelers Insurance Company of Hartford, Connecticut, the SteinRoe Trust is a series type investment company registered with the Commission on Form N-1A. SteinRoe Trust currently has seven investment portfolios ("SteinRoe Trust's Funds") that have differing investment objectives, policies and restrictions.

9. Keyport Trust is a registered series type investment company that currently has six investment portfolios (collectively, with SteinRoe Trust's Funds, "Funds"), that have differing investment objectives, policies and restrictions.

10. Applicants state that SMAF, USGF and MIF, as individual investment alternatives, have not generated the interest of owners of Contracts ("Contract Owners") or owners of Policies ("Policy Owners") (collectively "Owners") that was anticipated at the time of their creation. Also, overall variable product sales by Keyport, Keyport America and Liberty Life have not generated the volume of assets sufficient to make every investment alternative viable. According to the Applicants, in the one-year period ended December 31, 1994, the assets of SMAF attributable to Owners only increased by approximately \$2.0 million, the assets of USGF attributable to Owners decreased by approximately \$1.6 million, and the assets of MIF attributable to Owners decreased by approximately \$10.7 million.

11. MAF, MSIF and SIF are currently available in connection with new purchases and transfers under the Contracts offered by KMA Account and Account-K, the Contracts previously offered by KA VA Account, and the

Policies previously offered by Variable Account I and KA VLI Account. Applicants represent that Owners have received current prospectuses or prospectus supplements for the SteinRoe Trust and the Keyport Trust that include information concerning all Eligible Funds, including MAF, MSIF and SIF.

12. Applicants state that, on December 31, 1994, the assets attributable to Owners of each of the Funds expected to be eliminated were relatively small, i.e., approximately \$59.1 million in SMAF, approximately \$29.2 million in USGF and approximately \$42.4 million in MIF. In addition, none of these Funds have generated a sufficient level of Owner interest to justify their high expense ratios. Applicants state that the assets of USGF and MIF declined during the year ended December 31, 1994 and the assets of SMAF increased by only approximately \$2.0 million. Moreover, Applicants further state that none of these Funds have generated sufficient Owner interest to justify the expense reimbursements that SteinRoe and Keyport Advisory have assumed with respect to the Funds. Applicants believe that it is not in the public interest to continue to utilize SMAF, USGF and MIF as funding vehicles for the Contracts and Policies and that they can better serve the interests of Owners by utilizing investment alternatives that they believe may be better suited to the needs and interests of Owners.

13. Keyport, Keyport America and Liberty Life, on their own behalf and on behalf of the Accounts, propose to effect a substitution of shares of MAF for all shares of SMAF, shares of MSIF for all shares of USGF, and shares of SIF for all shares of MIF attributable to the Contracts and Policies. Keyport, Keyport America and Liberty Life have undertaken to pay all expenses and transaction costs associated with the Substitution, including any applicable brokerage commissions. On February 7, 1995, Keyport, Keyport America and Liberty Life supplemented the prospectuses of their respective Accounts to reflect the proposed Substitution ("Supplements"). The Supplements were sent to Owners. Keyport, Keyport America and Liberty Life will schedule the Substitution to occur as soon as practicable following the issuance of the order so as to maximize the benefits to be realized from the Substitution. Within five days after the Substitution, Keyport, Keyport America and Liberty Life will send to Owners written notice of the Substitution (the "Notice") that identifies the shares of the Funds that

have been eliminated and the shares of the Funds that have been substituted. Keyport, Keyport America and Liberty Life will include in such mailing the supplements to the prospectuses for the Accounts that disclose the completion of the Substitution.

14. Owners will be advised in the Notice that for a period of thirty days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available Sub-account, without limitation and without charge. Moreover, any transfers of all available assets from SMAF, USGF and MIF from the date of the Supplements will not be counted as transfer requests under any contractual provisions of the Contracts or Policies that limit allowable transfers. The period from the date of the Supplements to thirty days from the mailing of the Notice is referred to herein as the "Free Transfer Period." Following the Substitution, Owners will be afforded the same contract rights, including surrender and other transfer rights with regard to amounts invested under the Contracts and Policies as they currently have. Immediately following the Substitution, Keyport, Keyport America and Liberty Life, as appropriate, will combine: (i) The Sub-account invested in SMAF with the continuing Sub-account invested in MAF; (ii) the Sub-account invested in USGF with the continuing Sub-account invested in MSIF; and (iii) the Sub-account invested in MIF with the continuing Sub-account invested in SIF. Keyport, Keyport America and Liberty Life each will reflect this treatment in disclosure documents for their respective Accounts, the Financial Statements of their respective Accounts, the Financial Statements of their respective Accounts and the Form N-SAR annual reports filed by their respective Accounts.

15. Keyport, Keyport America and Liberty Life each will redeem for cash and securities all shares of SMAF, USGF and MIF they currently hold on behalf of the Accounts at the close of business on the effective date of the Substitution. The redemption of shares of SMAF, USGF and MIF will be effected partly for cash and partly for securities as a partial "redemption-in-kind." SteinRoe Trust and Keyport Trust will effect the redemptions-in-kind in a manner that is consistent with the investment objectives and policies and diversification requirements applicable to each Substitute Fund. Keyport, Keyport America and Liberty Life each will review the securities selected by SteinRoe and Keyport Advisory for redemption-in-kind to assure that such securities are suitable investments for

each Substitute Fund. Prior to effecting the Substitution, SteinRoe Trust and Keyport Trust will take all actions necessary to comply with the requirements of Rule 18f-1 of the 1940 Act. The securities redeemed in kind will be used together with the cash proceeds to purchase the shares of each Substitute Fund. Applicants have determined that partially effecting the redemption of shares of SMAF, USGF and MIF in kind is appropriate based on the current similarity of the portfolio investments of SMAF, USGF and MIF to those of MAF, MSIF and SIF, respectively. The valuation of any in kind redemptions will be made on a basis consistent with the normal valuation procedures of SMAF, USGF, MIF and the Substitute funds. In all cases, Keyport, Keyport America and Liberty Life on behalf of their respective Accounts will simultaneously place the redemption requests with SMAF, USGF and MIF and the purchase orders with MAF, MSIF and SIF, respectively, so that the purchases will be for the exact amount of the redemption proceeds. As a result, at all times, monies attributable to Owners currently invested in SMAF, USGF and MIF will be fully invested.

16. The full net asset value of the redeemed shares held by the Accounts will be reflected in the Owners' accumulation unit values following the Substitution. Keyport, Keyport America and Liberty Life have undertaken to assume all transaction costs and expenses relating to the Substitution, including any direct or indirect costs of liquidating the assets of SMAF, USGF and MIF so that the full net asset value of redeemed shares of SMAF, USGF and MIF held by the Accounts will be reflected in the Owners' accumulation unit values following the Substitution.

17. SteinRoe and Keyport Advisory have been fully advised of the terms of the Substitution. Keyport, Keyport America and Liberty Life anticipate that SteinRoe and Keyport Advisory, to the extent appropriate, will conduct the trading of portfolio securities in a manner that provides for the anticipated redemptions of shares held by Keyport and the Accounts.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides, in pertinent part that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." The purpose of Section 26(b) is both to protect the expectation of investors in a

unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with a substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants represent that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses it is designed to prevent. Applicants submit that the Substitution is an appropriate solution to the limited Owner interest and investment in SMAF, USGF and MIF and consistent with the alternative funding plans for the Contracts and Policies through the corresponding Substitute Funds. Applicants assert that the Substitution is being proposed in order to provide a consolidation of assets of Funds that currently are, and in the future are expected to be, of insufficient size to promote consistent investment performance or to reduce operating expenses.

3. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons: (a) The Substitution is of shares of the Substitute Funds whose objectives, policies and restrictions are sufficiently similar to the objectives of the Funds to be eliminated so as to continue fulfilling the Owner's objectives and risk expectations; (b) if an Owner so requests, during the Free Transfer Period, assets will be reallocated for investment in an Owner-selected Fund or Portfolio. Applicants represent that the Free Transfer Period is sufficient time for Owners to reconsider the Substitution; (c) the Substitution, in all cases, will be at the net asset value of the respective shares, without the imposition of any transfer or similar charge; (d) Keyport, Keyport America and Liberty Life have undertaken to assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage

commissions, relating to the Substitution and are effecting the redemption of shares of USGF and MIF in a manner that attributes all transaction costs to Keyport. The partial redemptions-in-kind contemplated for appropriate securities of SMAF, USGF and MIF are expected to contribute to the reduction of such costs; (e) the Substitution will not be counted as a transfer under any contractual provisions of the Contracts or Policies that limit allowable transfers; (f) the Substitution in no way will alter the insurance benefits to Owners or the contractual obligations of Keyport, Keyport America and Liberty Life; (g) the Substitution in no way will alter the tax benefits to Owners; (h) Owners may choose simply to withdraw amounts credited to them following the Substitution, under the conditions that currently exist, subject to any applicable declining sales load; and (i) the Substitution is expected to confer certain modest economic benefits to Owners by virtue of the enhanced asset size of the Substitute Funds. Applicants consent to be bound by the terms and conditions listed immediately above in this paragraph.

4. Applicants represent that, on the basis of the facts and circumstances described both in the application and below, they have determined that it is in the best interests of Owners to substitute shares of MAF, MSIF and SIF for shares of SMAF, USGF and MIF, respectively. Each of the Funds is an existing portfolio of either SteinRoe Trust or Keyport Trust. SteinRoe, the adviser of SteinRoe Trust, and Keyport Advisory, the adviser of Keyport Trust, are both indirect subsidiaries of Liberty Mutual. The Independent Accounts and distributor are the same for each of the Funds. Applicants have determined that: (i) The investment objective and related investments of MAF are significantly similar to those of SMAF; (ii) the investment objective and related investments of MSIF are significantly similar to those of USGF; and (iii) the investment objectives and related investments of SIF are significantly similar to those of MIF. Applicants represent that both SMAF and MAF are portfolios that use asset allocation across the asset categories of stocks, bonds and money market securities to seek to achieve high total returns. Applicants further represent that both USGF and MSIF are income-oriented portfolios that primarily use debt securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities to seek to achieve a high level of current income. Finally,

they represent that MIF and SIF are income-oriented portfolios that seek to achieve high current income, although SIF is a portfolio that uses more foreign sovereign debt obligations and more higher-yielding, lower-quality corporate debt securities to achieve its objectives than MIF is permitted to use. Applicants submit that, although MIF is a somewhat more conservatively managed portfolio whose use of foreign debt securities and high-yielding corporate bonds is permitted but more limited than in SIF, the average maturity and duration of both MIF's and SIF's portfolio securities are very similar.

5. In reviewing the Funds to form an opinion as to which Fund or Portfolio was an appropriate alternative to SMAF, USGF and MIF, Applicants submit that they were faced with a different economic environment than when SMAF, USGF and MIF were first established. Therefore, Applicants concluded that the selection of a Fund or Portfolio that shared the overall investment objective(s) of the Funds to be eliminated and that involved a comparable investment strategy or risk exposure would best serve the interests of Owners. Applicants state that they considered the fact that the investment performance of each Substitute Fund in which Owners will be indirectly invested following the Substitution is similar or superior to the investment performance of the substituted fund or Portfolio.

6. Applicants represent that SteinRoe Trust's adviser and administrator, SteinRoe, and Keyport Trust's adviser, Keyport Advisory, have agreed to reimburse each of the Funds for their operating expenses in excess of certain specified percentages until April 30, 1995. For the year ended December 31, 1994, for example, SteinRoe reimbursed SMAF and MIF for their operating expenses \$17,691 and \$38,790, respectively. USGF received no reimbursement for its operating expenses during that period. Applicants further represent that, after April 30, 1995, SteinRoe has determined to continue, if necessary, to voluntarily reimburse MAF and MSIF for their operating expenses in excess of .75% and .70%, respectively, of each such Fund's average daily net assets until April 30, 1996. In addition, Applicants represent that, after April 30, 1995, Keyport Advisory and its affiliates have voluntarily agreed to increase the reimbursement to SIF for its operating expenses so that all operating expenses in excess of .80% of its average daily net assets will be reimbursed until April 30, 1996. Applicants believe, that, starting with the one-year period beginning on

May 1, 1995, the anticipated expenses for each of the Funds to be eliminated are expected to be higher than or approximately the same as the anticipated or actual expenses of each of the corresponding Substitute Funds. Thus, on an annual basis, give or take one or two basis points, Owners will not be exposed to higher expenses, following the substitution and may, in fact, benefit from the lower expense ratios that should result from the consolidation of assets following the substitution. With respect to SMAF and USGF, Applicants state that the substitution will result in the consolidation of the assets of those Funds with substantially larger and more stable Funds. With respect to MIF, Applicants represent that the substitution will result in the assets in SIF (which commenced operation on July 14, 1994) increasing to over \$55.7 million. Applicants believe that these consolidations of assets should promote greater economies of scale that may help to lower each Fund's expense ratio and, thereby, increase each Fund's performance.

7. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of such 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. As explained above, immediately following the substitution, Keyport, Keyport America and Liberty Life, as appropriate, will combine: (i) the Sub-account invested in SMAF with the continuing Sub-account invested in MAF; (ii) the Sub-account invested in USGF with the continuing Sub-account invested in MSIF; and (iii) the Sub-account invested in MIF with the continuing Sub-account invested in SIF. Sub-accounts of a registered separate account are to be treated as separate investment companies in connection with substitution transactions. Therefore, Keyport, Keyport America and Liberty Life could be said to be transferring unit values between their Sub-accounts, and that the transfer of unit values could be said to involve purchases and sale transactions between Sub-accounts that are affiliated persons. For example, the Sub-account investing in SMAF could be said to be selling shares of such Fund to a Sub-account investing in MAF in return for units of such Sub-account. Conversely, it could be said that a Sub-

account investing in MAF was purchasing shares of SMAF. The sale and purchase transactions between Sub-accounts could be said to come within the scope of Sections 17(a)(1) and 17(a)(2) of the 1940 Act, respectively. Therefore, the substitution may require an exemption from section 17(a) of the 1940 Act, pursuant to section 17(b) of the 1940 Act.

8. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by section 17(a), upon application, if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned; (b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. Applicants represent that the terms of the proposed transactions, as described in the application, are reasonable and fair, including the consideration to be paid and received; do not involve over-reaching; are consistent with the policies of the Funds of SteinRoe Trust and Keyport Trust; and are consistent with the general purposes of the 1940 Act.

9. Applicants represent that, for all the reasons stated above, with regard to Section 26(b) of the 1940 Act, the Substitution is reasonable and fair. Applicants expect that existing and future Owners will benefit from the consolidation of assets in the corresponding Substitute Funds. Applicants state that the transactions effecting the Substitution, including the redemption of the shares of SMAF, USGF and MIF and the purchase of shares of MAF, MSIF and SIF, respectively, will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c-1 thereunder, as described above. Moreover, Applicants state that the partial redemptions-in-kind of shares of the Funds will be effected in conformity with Rule 18f-1 and Rule 17a-7 under the 1940 Act and the procedures of SteinRoe Trust and Keyport Trust established pursuant to Rule 17a-7. Applicants submit that owner interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. In each case, Applicants assert that the consideration to be received and paid is, therefore,

reasonable and fair. Keyport, Keyport America and Liberty Life each believe, based on their review of existing federal income tax laws and regulations and advice of counsel, that the Substitution will not give rise to any taxable income for Owners.

Applicants' Conclusions

Applicants submit, for all of the reasons stated herein, that their requests meet the standards set out in Sections 17(b) and 26(b) of the 1940 Act and that an order should, therefore, be granted. Accordingly, Applicants request an order pursuant to Sections 17(b) and 26(b) of the 1940 Act approving the substitution of shares of MAF for shares of SMAF, the substitution of shares of MSIF for shares of USGS, and the substitution of shares of SIF for shares of MIF, respectively.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-22196 Filed 9-6-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21331/812-9662]

Van Kampen Merritt Equity Trust et al.; Notice of Application

August 31, 1995.

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

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

APPLICANTS: Van Kampen Merritt Equity Trust (the "VK Trust"), American Capital Utilities Income Fund, Inc. (the "AC Fund"), Van Kampen American Capital Investment Advisory Corp. (the "VK Adviser"), Van Kampen American Capital Asset Management, Inc. (the "AC Adviser"), and Van Kampen American Capital Distributors, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit the VK Fund, a sub-trust of the VK Trust, to acquire all of the assets of the AC Fund. Because of certain affiliations, the two funds may not rely on rule 17a-8 under the Act.

FILING DATE: The application was filed on July 12, 1995. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 25, 1995, and should be accompanied by proof of service on 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942-0654, or Alison E. Baur, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Van Kampen Merritt Utility Fund (the "VK Fund") is a sub-trust of the VK Trust, an open-end management investment company organized as a Massachusetts business trust. The AC Fund is an open-end management investment company organized as a Maryland corporation (the VK Fund and the AC Fund are collectively referred to as the "Funds"). The VK Adviser advises the VK Fund, and the AC Adviser advises the AC Fund. As of May 31, 1995, the AC Adviser owned 9.25% of the outstanding voting shares of the AC Fund.

2. On December 20, 1994, The Van Kampen Merritt Companies, Inc. acquired from The Travelers Inc. all of the outstanding capital stock of American Capital Management & Research, Inc., which at that time was the parent company of the AC Adviser. Immediately following this acquisition, American Capital Management & Research, Inc. was merged into The Van Kampen Merritt Companies, Inc. and the combined entity was renamed Van Kampen American Capital, Inc. The VK Adviser, the AC Adviser, and the Distributor are wholly-owned subsidiaries of Van Kampen American Capital, Inc., and are organized as Delaware corporations.

3. Van Kampen American Capital, Inc. is a wholly-owned subsidiary of VK/AC Holding, Inc. VK/AC Holding, Inc., in turn, is controlled by The Clayton & Dubilier Private Equity Fund IV Limited Partnership ("C&D L.P."), which owned, as of August 29, 1995, approximately 86 percent of the common stock of VK/AC Holding, Inc. C&D L.P. is managed by Clayton, Dubilier & Rice, Inc., a New York-based private investment firm. The general partner of C&D L.P. is Clayton & Dubilier Associates IV Limited Partnership.

4. The investment objectives of the Funds are essentially the same. The investment objective of the VK Fund is to provide its shareholders with capital appreciation and current income. The VK Fund seeks to achieve its objective by investing in a diversified portfolio of common stocks and income securities issued by companies engaged in the utilities industry. Under normal market conditions, at least 80% of the VK fund's assets are invested in securities issued by companies engaged in the utilities industry. As of May 31, 1995, the net assets of the VK Fund were \$134,753,821.

5. The primary investment objective of the AC Fund is to provide its shareholders with current income. Capital appreciation is a secondary objective which is sought only when consistent with the primary objective. The AC Fund seeks to achieve its investment objective by investing in a diversified portfolio of common stocks and income securities issued by companies engaged in the utilities industry. Under normal market conditions, at least 65% of the AC Fund's assets are invested in securities issued by companies engaged in the utilities industry. As of May 31, 1995, the net assets of the AC Fund were \$26,996,393.

6. Each fund offers three classes of shares. Class A shares of the Funds generally are sold with a front-end sales charge. Purchases of Class A shares in excess of \$1,000,000 are not subject to a front-end sales charge but are subject to a contingent deferred sales charge ("CDSC") of 1.00% if redeemed within one year from the date of purchase. Class B shares of the Funds are sold without a front-end sales charge but are subject to a CDSC payable upon redemption. Class C shares of the Funds are sold without a front-end sales charge and are subject to a CDSC of 1.00% if redeemed within one year of purchase.

7. The VK Fund proposes to acquire all of the assets of the AC Fund, in exchange for shares of beneficial interest in the VK Fund and the assumption by the VK Fund of all of the liabilities of