

environmental impact statement for the proposed exemption is not warranted.

The request for exemption was docketed under 10 CFR Part 72, Docket 72-30. For further details with respect to this action, see the exemption request dated November 7, 2002. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 31st day of January, 2003.

For the Nuclear Regulatory Commission.

**Stephen C. O'Connor,**

*Sr. Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03-3234 Filed 2-7-03; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8968-ML-REN, ASLBP No. 03-809-01-ML-REN]

### Hydro Resources, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: Hydro Resources, Inc., Crownpoint Uranium Project, Crownpoint, New Mexico, (Materials License Renewal).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing and petition for leave to intervene submitted by Bonnie Benally Yazzie on January 14, 2003, in response to a notice of timely receipt and

consideration of an application of Hydro Resources, Inc., for renewal of its 10 CFR part 40 source materials license for uranium production at the Crownpoint Uranium Project, Crownpoint, New Mexico. The notice of opportunity to provide comments and to request a hearing was published in the **Federal Register** on December 16, 2002 (67 FR 77,084).

The Presiding Officer in this proceeding is Administrative Judge Thomas S. Moore. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Moore and Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Thomas S. Moore, Administrative Judge, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Thomas D. Murphy, Administrative Judge, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Issued at Rockville, Maryland, this 4th day of February 2003.

**G. Paul Bollwerk, III,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 03-3231 Filed 2-7-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25924; 812-12886]

### Van Kampen Investment Advisory Corp., et al.; Notice of Application

February 3, 2003.

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

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c-3 under the Act, and pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered closed-end management

companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges.

**APPLICANTS:** Van Kampen Prime Rate Income Trust ("Prime Rate") and Van Kampen Senior Floating Rate Fund ("Senior Floating Rate") (each a "Fund" and collectively, the "Funds"), Van Kampen Investment Advisory Corp. ("Adviser"), Van Kampen Funds Inc. ("Distributor") and Van Kampen Investments Inc. ("Van Kampen Investments").

**FILING DATES:** The application was filed on September 25, 2002 and amended on January 31, 2003.

**HEARING OR NOTIFICATION OF HEARING:**

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 28, 2003, and should be accompanied by proof of service on the 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 Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609; Applicants, c/o A. Thomas Smith III, Van Kampen Investments Inc., 1 Parkview Plaza, Oakbrook Terrace, IL 60181-5555.

**FOR FURTHER INFORMATION CONTACT:** Jean E. Minarick, Senior Counsel, at (202) 942-0527 or Nadya B. Roytblat, Assistant Director, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

### Applicants' Representations

1. The Funds are closed-end management investment companies registered under the Act and organized as Massachusetts business trusts. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds. The Distributor, a

broker-dealer registered under the Securities Exchange Act of 1934 ("1934 Act"), distributes each Fund's shares. The Adviser and the Distributor are both wholly-owned subsidiaries of Van Kampen Investments. The Distributor and Van Kampen Investments act as administrator to Prime Rate and Senior Floating Rate, respectively. Van Kampen Investments is an indirect, wholly-owned subsidiary of Morgan Stanley.

2. Applicants request that the order also apply to any other registered closed-end management investment company that may be organized in the future for which the Adviser, the Distributor or Van Kampen Investments or any entity controlling, controlled by, or under common control with the Adviser, the Distributor or Van Kampen Investments acts as investment adviser, principal underwriter or administrator and which provides periodic liquidity with respect to its shares pursuant to rule 13e-4 under the 1934 Act or operates as an interval fund pursuant to rule 23c-3 under the Act.<sup>1</sup>

3. The investment objective of each of the Funds is to provide a high level of current income, consistent with the preservation of capital. The Funds invest primarily in adjustable rate senior loans. In normal market conditions, each Fund plans to invest at least 80% of its total assets in adjustable senior rate loans. Each Fund may also invest up to 20% of its total assets in any combination of the following: (a) warrants, equity securities and junior debt securities, in each case that are acquired in connection with the acquisition, restructuring or disposition of a senior loan, and (b) high quality short-term debt securities.

4. The Funds continuously offer their shares to the public at net asset value. Shares of Prime Rate and shares of Senior Floating Rate are currently sold without a front-end sales charge, although they are subject to early withdrawal charges ("EWCs") payable to the Distributor if the shareholder redeems his or her shares during the first five years or first year, respectively, after purchasing the shares. The Funds' shares are not offered or traded in the secondary market and are not listed on any exchange or quoted on any quotation medium. The Funds consider each quarter to offer to repurchase a portion of their outstanding shares at their then current net asset value pursuant to rule 13e-4 under the 1934

Act. The Funds may in the future operate as "interval funds" pursuant to rule 23c-3 under the Act and make periodic repurchase offers to their shareholders.

5. The Funds seek the flexibility to be structured as multiple class funds and currently intend to offer three different classes of shares. The Funds may offer shares at net asset value, plus a front-end sales charge ("Class A Shares"). The Funds may issue shares similar to certain classes of shares issued by other funds in the Van Kampen group of investment companies in that such shares are offered at net asset value with no front-end sales charge and are subject to a deferred sales charge. Prime Rate currently offers shares at net asset value without a sales charge, but subject to an EWC on shares that are repurchased by Prime Rate within five years of the date of purchase ("Class B Shares"). Senior Floating Rate currently offers shares at net asset value without a sales charge, but subject to an EWC on shares that are repurchased within one year of the date of purchase and an annual asset-based service fee of up to 0.25% of average daily net assets ("Class C Shares"). Prime Rate may add a class of shares, designated as Class C Shares, similar to the Class C Shares of Senior Floating Rate, and Senior Floating Rate may add a class of shares, designated as Class B Shares, similar to Class B Shares of Prime Rate. The Funds' shares may become subject to an annual asset-based distribution fee of up to 0.75% of average daily net assets, as well as to an annual asset-based service fee of up to 0.25% of average daily net assets. The Funds may in the future offer additional classes of shares with a front-end sales charge, an EWC and/or asset-based service or distribution fees.

6. Applicants represent that any asset-based service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD Sales Charge Rule"). Applicants also represent that each Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N-1A.

7. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be

borne on a *pro rata* basis by each outstanding share of that class. Each Fund may create additional classes of shares in the future that may have different terms from Class B and Class C shares. Applicants state that each Fund will comply with the provisions of rule 18f-3 under the Act as if it were an open-end investment company.

8. Each Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, each Fund will comply with rule 22d-1 under the Act as if the Fund were an open-end investment company.

9. Each Fund may offer its shareholders an exchange feature under which shareholders of the Fund may, during the Fund's periodic repurchase periods, exchange their shares for shares of the same class of other registered open-end investment companies or registered closed-end investment companies in the Van Kampen group of investment companies. If either Fund operates pursuant to rule 23c-3, Fund shares so exchanged will count as part of the repurchase offer amount as specified in rule 23c-3 under the Act. Any exchange option will comply with rule 11a-3 under the Act as if the Fund were an open-end investment company subject to that rule. In complying with rule 11a-3, each Fund will treat the EWCs as if they were a contingent deferred sales charge ("CDSC").

### Applicants' Legal Analysis

#### *Multiple Classes of Shares*

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if and

<sup>1</sup> Any registered closed-end management investment company relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes of the Funds is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Funds to facilitate the distribution of their securities and provide investors with a broader choice of shareholder services. Applicants assert that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f-3 as if it were an open-end investment company.

#### *Early Withdrawal Charges*

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company will purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c-3 under the Act permits a registered closed-end investment company (an "interval fund") to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c-3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted

above, section 6(c) provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Because the Funds may operate in the future pursuant to rule 23c-3 under the Act, Applicants request relief under sections 6(c) and 23(c) from rule 23c-3 to permit them to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

4. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c-10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end investment companies under rule 6c-10. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs. Applicants will comply with rule 6c-10 as if that rule applied to closed-end investment companies. The Funds also will disclose EWCs in accordance with the requirements of Form N-1A concerning CDSCs. Applicants further state that the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d-1 under the Act.

#### *Asset-Based Distribution Fees*

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into

distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 under the Act to permit the Funds to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies.

#### **Applicants' Condition**

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c-10, 11a-3, 12b-1, 17d-3, 18f-3, and 22d-1 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-3118 Filed 2-7-03; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 10, 2003: Closed Meetings will be held on Tuesday, February 11, 2003 at 10 a.m., and on Thursday, February 13, 2003 at 10 a.m.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, February 11, 2003 will be:

Formal orders of investigation;