

4. Nations Gartmore will bear the costs of preparing and filing this application. The Funds will not bear the costs relating to the solicitation of shareholder approval of the Funds' shareholders necessitated by the consummation of the Direct Purchase and Tender Offer.

5. Nations Gartmore will take all appropriate steps so that the scope and quality of sub-advisory services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the respective Boards of Directors, including a majority of the non-interested Boards of Directors members, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, Nations Gartmore will apprise and consult with the Board of Directors of the affected Fund or Funds to assure that they, including a majority of the non-interested Board members, are satisfied that the services provided will not be diminished in scope or quality.

6. The Board of Directors of each Fund, including a majority of non-interested Directors, will have approved the New Sub-Advisory Agreements in accordance with the requirements of section 15(c) of the Act prior to termination of the Existing Sub-Advisory Agreements.

For the SEC, by the Division of Investment Management, under delegated authority.
Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC-21800; File No. 812-9922]

Zurich Life Insurance Company of America, et al.; Notice of Application

March 4, 1996.

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

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

APPLICANTS: Zurich Life Insurance Company of America ("Zurich Life"), Kemper Investors Life Insurance Company ("KILICO"), Federal Kemper Life Assurance Company ("FKLA"), Zurich Life Variable Annuity Separate Account (the "Account"), and Investors Brokerage Services, Inc. ("IBS").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants request an order permitting Zurich Life, KILICO and FKLA to deduct mortality and expense risk charges from the assets of certain separate accounts that fund certain individual deferred variable annuity contracts.

FILING DATE: The application was filed on December 28, 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 by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on March 29, 1996, 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 reasons for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Frank J. Julian, Esq., Kemper Investors Life Insurance Company, KLIC Legal T-1, 1 Kemper Drive, Long Grove, Illinois, 60049.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: 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. Zurich Life, KILICO, and FKLA (collectively referred to as the "Companies") are stock life insurance companies organized under the laws of Illinois. Zurich Life is a wholly-owned subsidiary of Zurich Insurance Company; KILICO is wholly-owned subsidiary of Kemper Financial Corporation ("Kemper"); and FKLA is a wholly-owned subsidiary of Kemper. Zurich Life entered into a definitive agreement to become the majority owner of Kemper, including Kemper's direct and indirect subsidiaries, KILICO and FKLA. Zurich Life is the depositor of the Account.

2. The Account, established by Zurich Life under Illinois law as an insurance company separate account to fund certain variable annuity contracts (the "Account Contracts"), is registered under the 1940 Act as a unit investment

trust. Applicants request that the relief sought herein extend to variable annuity contracts that are materially similar to the Account Contracts ("Future Contracts") (the Account Contracts and the Future Contracts collectively referred to as the "Contracts") and that are offered by the Account.

3. The Companies may establish one or more separate accounts in the future ("Other Accounts") (Other Accounts and the Account are referred to collectively as the "Separate Accounts") to support Future Contracts that are offered through any other broker-dealer that (i) may serve in the future as principal underwriter in respect of certain variable annuity contracts offered by the Companies, (ii) is registered under the Securities Exchange Act of 1934 as a broker-dealer and which is or will be a member of the National Association of Securities Dealers, Inc. (the "NASD"), and (iii) is controlling, controlled by, or under common control with Zurich Life or any other affiliated insurance company (Other Principal Underwriters"). Applicants request that the relief sought herein extend to the Other Accounts.

4. The Account is comprised of 14 sub-accounts each of which invests in the corresponding portfolio or series of a management investment company registered under the 1940 Act. Zurich Life may create new sub-accounts of the Account.

5. IBS, a registered broker-dealer and a member of the NASD, is the principal underwriter of the Account Contracts.

6. The Account Contracts provide retirement payments or other long-term benefits for individuals who qualify for federal income tax advantages available under Sections 401, 403(b), 408 and 457 of the Internal Revenue Code of 1986, as amended ("qualified Account Contracts"), and for individuals desiring such benefits who do not qualify for such tax advantages ("non-qualified Account Contracts"). The Account Contracts will be offered on a flexible payment basis.

7. Applicants state that the minimum initial purchase payment is \$50 for a qualified Account Contract and \$2,500 for a non-qualified Account Contract. The minimum additional purchase payment for a non-qualified Account Contract is \$500. However, when purchase payments are made through a systematic investing program and the annual contribution is not less than \$600, the minimum payment is \$50.

8. Certain charges and fees are assessed under the Account Contracts. Where applicable, the dollar amount of state premium taxes previously paid or payable upon annuitization by Zurich

Life may be charged against Contract Value (the amount that the Account Contract provides for investment at any time) if not previously assessed, when and if the Account Contract is annuitized. Premium taxes range up to 3.5%.

9. No front-end sales charge is imposed when purchase payments are applied under the Account Contracts. However, a contingent deferred sales charge ("CDSC") will be used to cover expenses relating to the sale of the Account Contracts. The maximum CDSC is 6% of the amount withdrawn during the first Contract year. The percentage scales downward by one percent each year, so that there is no charge against accumulation units withdrawn or annuitized in the seventh and later contribution years. Contract owners will be permitted to withdraw up to 10% of the Contract Value determined at the time the withdrawal is requested in any Contract year without the assessment of any sales charge. If the Contract owner withdraws an amount in excess of the 10% amount, the excess withdrawn is subject to a CDSC. In no event, will the CDSC under the Account Contracts be greater than 7.25% of purchase payments.

10. Applicants submit that proceeds from the CDSC may not cover the expected cost of distributing the Account Contracts and that any shortfall will be recovered from Zurich Life's general assets, which may include revenue from the mortality and expense risk charge deducted from the Account.

11. The administrative charges to be assessed with respect to the Account Contracts will be (i) an annual records maintenance charge of \$36 per Contract year, which is deducted from the Contract Value upon surrender of the Account Contract, and which is not assessed during the annuity period, and (ii) an asset-related administration charge at an annual rate of .10%. These charges may be reduced by Zurich Life but may not be increased for outstanding Account Contracts.

12. Zurich Life and the Account represent that they do not expect that the total revenues from the administrative cost portion of the asset-based charge will be greater than the expected administrative expenses, in conformity with the requirements of Rule 26a-1(b) under the 1940 Act. Applicants represents that they are relying on Rules 26a-1 and 6c-8 under the 1940 Act in connection with the imposition of the records maintenance charge under the Account Contract.

13. Applicants propose to deduct a daily charge for mortality and expense risks from the assets of the Account.

With respect to the Account Contracts, Zurich Life will assess the Account with a daily charge for mortality and expense risks at an aggregate annual rate of 1.20%. Approximately .85% of the annual charge is allocated to the mortality risks and .35% is allocated to the expense risks.

14. Applicants represent that Zurich Life will assume a mortality risk by its contractual obligation to pay a death benefit to the beneficiary if the owner, as defined in the Account Contract, dies prior to the annuity date. Applicants assert that the Account Contracts provide a guaranteed death benefit that is the greater of: (a) the Contract Value at the time of death; or (b) the total net amount of purchase payments, reduced by any withdrawals.

15. Applicants also represent that Zurich Life assumes a mortality risk by its contractual obligation to continue to make annuity payments for the life of the annuitant, as defined in the Account Contract, under annuity options involving life contingencies. This assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the annuity payments received under an Account Contract. This relieves the annuitant from the risk of outliving the amounts accumulated for retirement. At the same time, Applicants represent that Zurich Life assumes the risk that annuitants as a group will live a longer time than Zurich Life predicts, which would require Zurich Life to pay out more in annuity income than planned.

16. In addition to mortality risks, Applicants assert that Zurich Life assumes an expense risk under the Account Contracts because the administrative charges under the Contracts may be insufficient to cover actual administrative expenses.

17. Applicants represent that if the mortality and expense risk charges assessed against Account assets are insufficient to cover the expenses and costs assumed, the loss will be borne by Zurich Life. If the amount deducted for mortality and expense risk charges proves more than sufficient, the excess will be profit to Zurich Life. Zurich Life anticipates earning a profit from the mortality and expense risk charge.

Applicants' Legal Analysis

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the

Separate Accounts which fund the Contracts.

2. Section 6(c) of the 1940 Act, in relevant part, provides that the Commission may issue an order exempting any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act as may be 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 1940 Act.

3. Sections 26(a)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor thereof or principal underwriter therefore, from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified trustee or custodian and held under an agreement that provides that no payment to the depositor or principal underwriter shall be allowed except as a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

4. Applicants assert that the requested exemptions meet the standards of Section 6(c) of the 1940 Act, and that the terms of the relief requested with respect to the Account Contracts or Future Contracts funded by a Separate Account and distributed by IBS or any Other Principal Underwriter are consistent with the standards set forth in Section 76(c) of the 1940 Act. Applicants state that without the requested future relief, they would have to request and obtain exemptive relief in connection with Account Contracts or Future Contracts to the extent required. Applicants submit that any such additional requests for exemption would present no issues under the 1940 Act that have not already been addressed in this application.

5. Applicants submit that the requested exemptive relief is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for Zurich Life and its appropriate affiliates to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of resources. The delay and expense involved in having to seek exemptive relief repeatedly would impair the ability of Zurich Life and its appropriate affiliates to take advantage of business opportunities as they arise. If Zurich Life and its appropriate affiliates were required to seek exemptive relief

repeatedly with respect to the issues addressed in this Application, investors would not receive any benefit or additional protection thereby. Indeed, they might be disadvantaged as a result of increased overhead expenses incurred by Zurich Life and its appropriate affiliates. Applicants further submit that, for the same reasons, the requested relief is consistent with the purposes of the 1940 Act and the protection of investors.

6. Applicants represent that the mortality and expense risk charge of 1.20% is and will be within the range of industry practice for comparable annuity products. Applicants state that this determination is, and for Future Contracts will be, based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees, and guaranteed annuity rates. Zurich Life, KILICO and FKLA undertake to maintain at their home offices, and make available to the Commission upon request, memoranda setting forth in appropriate detail the products analyzed, the methodology, and the results of the analysis relied upon, in making the foregoing determination.

7. The CDSC may be insufficient to cover all costs relating to the distribution of the Account Contracts. In that event, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the CDSC. Notwithstanding the foregoing, Applicants have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and Contract owners. Zurich Life, KILICO and FKLA undertake to maintain at their principal offices, and make available upon request to the Commission and its staff, memoranda setting forth the basis for such conclusion.

8. Zurich Life, KILICO and FKLA also represent that the Separate Accounts will invest only in an underlying fund that undertakes, in the event it should adopt any plan pursuant to Rule 12b-1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applicants submit, for the reasons stated herein, that the requested

exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act—to permit the deduction of a mortality and expense risk charge from Separate Account assets funding the Contracts—meet the standards set out in Section 6(c) of the 1940 Act. Accordingly, Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36916; File No. SR-PSE-96-06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Distributing Interim Reports to Both Registered and Beneficial Shareholders

March 4, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on February 22, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 1, 1996, the Exchange submitted Amendment No. 1 to the proposed rule change.¹ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ See letter from Michael D. Pierson, PSE, to Jennifer Choi, Division of Market Regulations, SEC, dated February 29, 1996. In Amendment No. 1, the Exchange replaces the term "shall" with "should" in the text of Commentary .03 to PSE Rule 3.3(t). This amendment makes the PSE's proposal consistent with those of the New York Stock Exchange and the American Stock Exchange. See Securities Exchange Act Release No. 35373 (Feb. 14, 1995), 60 FR 9709 (Feb. 21, 1995); Securities Exchange Act Release No. 36541 (Nov. 30, 1995), 60 FR 62921 (Dec. 7, 1995). In Amendment No. 1, the Exchange also makes a couple of grammatical changes to Commentary .01 and Commentary .02 to PSE Rule 3.3(t).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to state that corporations that distribute interim reports to shareholders should distribute such reports to both registered and beneficial shareholders. The text of the proposed rule change is available at the Exchange and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Corporate Governance and Disclosure Policies currently provide for the disclosure to shareholders of quarterly reports and interim reports.² The Exchange is proposing to adopt new Commentary .03 to Rule 3.3(t) to provide that any listed company that distributes interim financial reports should distribute such reports to both registered and beneficial shareholders. The commentary would further state that the financial reports that are subject to this rule are those that are voluntarily distributed by the company as part of its shareholder relations activities, and not the quarterly financial reports required to be filed with the Commission pursuant to Section 13(a) and Section 15(d) of the Act. Although the distribution of interim reports will continue to be voluntary, if a corporation chooses to distribute interim reports to shareholders, it should distribute them to both registered and beneficial shareholders.

The purpose of the proposed rule change is to ensure equal treatment of record and beneficial shareholders in the distribution of interim financial reports. The proposal is consistent with a similar rule of the New York Stock

² See PSE Rule 3.3(t), Commentaries .01 and .02.