comments of any length may be submitted for the record.

Transcripts of this meeting will be available on computer disk, via e-mail, or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning January 13, 1998. For further information, contact Frank Randall, External Affairs, 2300 Clarendon Blvd., Suite 1300, Arlington, Virginia 22201–3367; (Tel) 703–235–4473; (Fax) 703–235–4495; (E-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and commercial spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Dated: November 18, 1997.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 97–30621 Filed 11–20–97; 8:45 am]

BILLING CODE 6820–AM–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice was previously published at 62 FR 61153 on November 14, 1997, that the Railroad Retirement Board would hold a meeting on November 19, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. This meeting has been canceled.

Date: November 18, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–30770 Filed 11–19–97; 10:52 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22888; File No. 812–10740]

The Guardian Insurance & Annuity Company, Inc., et al.; Notice of Application

November 14, 1997.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting relief from rule 6e–2(c)(1) and from certain provisions of the Act and rules thereunder specified in paragraph (b) of rule 6e–2; and from sections 2(a)(32) and 27(i)(2)(A) of the Act and rules 6e–2(b)(12) and 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary: (1) to permit them to offer and sell certain variable whole life insurance policies with modified scheduled premiums (''Policies''); and (2) to permit certain other persons which may become the principal underwriter for such Policies (''Future Underwriters'') to offer and sell such Policies.

APPLICANTS: The Guardian Insurance & Annuity Company, Inc. (''GIAC''), The Guardian Separate Account K (''Separate Account''), and Guardian Investor Services Corporation (''GISC'').

FILING DATES: The application was filed on July 28, 1997, and amended and restated on October 20, 1997.

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 December 9, 1997, 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 Richard T. Potter, Jr., Esq., The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue, South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. GIAC, a Delaware stock life insurance company, is a wholly-owned subsidiary of The Guardian Life Insurance Company of America.

2. GIAC established the Separate Account under Delaware insurance law to serve as a funding vehicle for certain variable life insurance products. The Separate Account is registered under the Act as a unit investment trust. The Separate Account currently has eight investment divisions, each of which invests in shares of a corresponding mutual fund registered under the Act as an open-end diversified management investment company.

3. GISC, a wholly-owned subsidiary of GIAC, will act as the principal underwriter for the policies. GISC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (the ''NASD'').

4. Those premium amounts set forth in each Policy which must be paid to obtain the benefits provided by the Policy exclusive of the additional benefit riders (''Basic Scheduled Premiums'') plus rating charges for those insureds that do not satisfy (GIAC's underwriting requirements for standard issuance, and premiums for insurance benefits that the Policy owner may add as riders to the Policy (collectively, ''Policy Premium Assessments'') are payable until the Policy anniversary nearest the insured's 100th birthday. If all Basic Scheduled Premiums and Policy Premium Assessments (collectively, ''Policy Premiums'') are paid when due or skipped under the premium skip option (described below), the Policy will not lapse and will retain its minimum death benefit guarantee until the Policy anniversary nearest the insured's 100th birthday, so long as no partial withdrawals are made and there is no Policy debt outstanding.

5. Policy Premiums may be paid annually or periodically. Each periodic Policy Premium must be at least $100.

6. The Policy's Basic Scheduled Premiums cannot be increased during the guaranteed premium period, but will be reduced by GIAC if the Policy's face amount is decreased. The guaranteed premium period starts on the Policy date and ends on the later of the Policy anniversary nearest the insured's 70th birthday or the 10th Policy anniversary. After the expiration of the guaranteed premium period, a

Policy's Basic Scheduled Premiums may increase.

7. A Policy owner also may make unscheduled premium payments, subject to certain limits and restrictions set forth in the Policy and GIAC's administrative procedures.

8. GIAC generally credits and allocates each payment as of the business day of receipt, if it receives the payment before the close of business at its executive office. There are two exceptions to this practice. First, GIAC credits and allocates any payment received prior to the issue date on the issue date. Second, GIAC credits and allocates that portion of any payment that is used to pay a Policy Premium on the premium due date if such payment is received on or during the 31 days preceding such premium due date.

9. If Policy Premiums and/or unscheduled payments in excess of $100,000 are received from the Policy owner prior to the later of: (i) 45 days after Part I of the completed application is signed; or (ii) 15 days after the issue date, GIAC will allocate that portion, if any, of a scheduled premium payment or an unscheduled payment which is allocated among the variable investment options and the fixed-rate option according to instructions provided by the Policy owner (''net premium'') in excess of $100,000 (''excess net premium'') to The Guardian Cash Fund, a money market fund. On the later of (i) or (ii), any excess net premium allocated to The Guardian Cash Fund and any earnings attributable thereto, will be re-allocated in accordance with the policy owner's then-current allocation instructions.

10. The Policy provides for a premium skip option, which permits an owner to skip one or more scheduled premium payments after the first Policy year, subject to certain conditions. When a premium skip is effected, GIAC deducts from the sum of the values attributable to a Policy which are allocated to the variable investment options, the fixed-rate option, and the loan collateral account (the ''Policy Account Value'') an amount equal to 92.5% of any Policy Premium Assessments that would be due on the Policy Anniversary to pay such assessments for the coming Policy year. The amount will be deducted proportionately from the Policy Account Value attributable to the variable investment options. If some or all of the required deduction exceeds the Policy Account Value held in the variable investment options, GIAC will deduct the remainder from the Policy Account Value held in the fixed-rate option.

11. In addition, a Policy owner may use up to 90% of the Policy's cash surrender value less any then-outstanding Policy debt (''loan value'') to pay a Policy Premium if the Policy owner has elected and is eligible for the Policy's automatic premium loan feature. Under the automatic premium loan feature, GIAC transfers the required premium amount from the unloaned Policy Account Value to the loan collateral account and uses the loan proceeds to pay the Policy Premium due.

12. A Policy Premium which is unpaid as of its due date is in default, but the Policy provides a 31-day grace period for the payment of each Policy Premium after the first. If the insured should die during the grace period and before the premium is paid, the death proceeds payable to the beneficiary will be reduced by an outstanding Policy debt and any due and unpaid Policy Premium for the period through the Policy month of death. If GIAC does not receive a Policy Premium before the grace period ends, and neither the premium skip option nor the automatic premium loan feature are available, and no waiver of premium rider is in effect, the Policy will lapse. Upon Policy lapse, all insurance coverage ends as of the end of the grace period, unless a policy value option becomes effective. The Policy owner can surrender the Policy for its net cash surrender value at any time during the grace period.

13. GIAC deducts Policy Premium Assessments and a premium charge from Policy Premiums and unscheduled payments. Policy Premium Assessments are deducted from each Policy Premium to cover GIAC's risks and costs associated with providing insurance coverage to higher risk insureds or providing additional benefits through Policy benefit riders.

14. The premium charge initially is equal to 7.5% of each Basic Scheduled Premium and each unscheduled payment and will decrease to 4.5% after the total amount of premiums paid under a Policy, through Basic Scheduled Premiums and/or unscheduled payments, equals 12 annual Basic Scheduled Premiums payable during the guaranteed premium period for the current fact amount. This charge covers premium taxes, a portion of GIAC's federal income tax burden, and a premium sales charge. GIAC also reserves the right to charge a maximum handling fee of $2.00 for each unscheduled payment it receives.

15. GIAC deducts each month from the Policy Account Value a Policy charge, an administration charge, a guaranteed insurance amount charge, and a charge for the cost of insurance. These charges compensate GIAC for the cost of underwriting and issuing a Policy. GIAC also may make transaction deductions upon: (i) a partial withdrawal (the lesser of $25 or 2% of the requested withdrawal amount); (ii) a premium skip; and (iii) a transfer after the twelfth transfer in a Policy year ($25). GIAC also charges the Separate Account for the mortality and expense risks it assumes, at an annual rate of 0.60% (guaranteed not to exceed 0.90%) of the Separate Account's average daily net assets. Charges for investment advisory and other Fund expenses are indirectly borne by owners of the Policies.

16. During the first 12 Policy years, GIAC deducts a surrender charge upon surrender, lapse, a lapse option taking effect upon Policy default, and upon a reduction in face amount by request or through a partial withdrawal. The surrender charge during the first Policy year is expressed as a flat dollar amount charge per $1000 in face amount; the per $1000 rate will vary from $5.37 to $58.87 based upon the issue age, sex, and underwriting class of the insured. The surrender charge will decrease proportionally on an annual basis over the first 12 Policy years so that the surrender charge beginning in year 13 is $0. After imposition of the surrender charge, a Policy's net cash surrender value may be zero, particularly in early Policy years.

17. In the case of a reduction in face amount, the surrender charge is prorated by multiplying the applicable surrender charge by the following fraction to reduce the payable charges:

$$\frac{\text{the amount of the face amount reduction}}{\text{the face amount prior to the reduction}}$$

The adjusted surrender charge is paid by deductions from the unloaned Policy Account Value. The surrender charge is intended to compensate GIAC for certain sales-related and administrative expenses.

18. The Policy provides for two alternate death benefit options. The Option 1 death benefit is equal to the greatest of: (i) the face amount of the Policy on the date of the insured's death; (ii) the minimum death benefit then required under federal tax laws on the monthly date preceding the insured's death; or (iii) after the first Policy year, the Policy's ''variable insurance amount.'' The variable insurance amount provides a guarantee that the death benefit will be greater than the then-effective face amount if the Policy Account Value is greater than

the net single premium set forth in that Policy on any Policy review date.

19. The Option 2 death benefit is equal to the greatest of: (i) the face amount of the Policy on the date of the insured's death plus any amount by which the Policy Account Value then exceeds the Benchmark Value [1] as adjusted to the monthly date preceding the date of death; (ii) the minimum death benefit then required under federal tax laws on the monthly date preceding the insured's death; or (iii) after the first Policy year, the Policy's variable insurance amount.

20. Under an Option 1 Policy, when favorable investment performance and unscheduled payments increase the Policy Account Value, the Net Amount at Risk (the amount of death benefit provided under the death benefit option then in force minus the Policy Account Value) under the Policy will decrease. When the Net Amount at Risk is reduced, the dollar amount of the cost of insurance charge deducted on each monthly date may also decline.

21. Under an Option 2 Policy, favorable investment performance and the addition of unscheduled payments can possibly increase the Policy Account Value sufficiently to increase the death benefit. At such time, however, the Net Amount at Risk will not change as a result of the favorable investment performance or unscheduled payments. Unfavorable investment performance can reduce an Option 2 Policy's death benefit, but the benefit will never be less than the face amount.

22. Under either Option, any partial withdrawal taken after a monthly date will reduce the death benefit by the amount of the partial withdrawal and any applicable charge if the insured dies after that monthly date but prior to the next succeeding monthly date.

Applicants' Legal Analysis

Definition of ''Variable Life Insurance Contract''

1. Rule 6c–3 grants exemptions from those provisions of the Act that are specified in paragraph (b) of Rule 6e–2 (except for Sections 7 and 8(a)) to certain separate accounts of life insurance companies that support variable life insurance policies. Specifically, the exemptions provided by Rule 6c–3 are available only to separate accounts registered under the Act whose assets are derived solely from the sale of ''variable life insurance contracts'' that meet the definition set forth in Rule 6e–2(c)(1), and from certain advances made by the insurer. The term ''variable life insurance contract'' is defined by Rule 6e–2(c)(1) to include only life insurance policies that provide a death benefit and a cash surrender value, both of which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an initial dollar amount stated in the policy.

2. Applicants believe that the Option 2 death benefit falls within the requirement that it ''vary to reflect the investment experience of the separate account.'' Although the Option 2 death benefit varies only when the Policy's cash value exceeds its Benchmark Value, Applicants state that it is analogous to more conventional scheduled premium variable life insurance policies where death benefits are increased when investment experience exceeds an assumed investment rate. Rule 6e–2(c)(1) clearly contemplates that a death benefit would vary only if it exceeds a guaranteed minimum death benefit. A Policy under the Option 1 death benefit, however, will fail to satisfy this requirement if the death benefit has not been otherwise increased to satisfy Federal tax law requirements.

3. The Policy also contains other provisions, relating primarily to the flexibility of premium payments, that are not specifically addressed in Rule 6e–2. Applicants must rely on certain exemptive provisions in Rule 6e–2(b), as described below, in order to issue, sell, and maintain the Policies.[2] Applicants therefore request relief from the definition of ''variable life insurance contract'' set forth in Rule 6e–2(c)(1) to the extent necessary to permit reliance on the exemptions provided in each of the provisions of paragraph (b) of Rule 6e–2 that are set forth below, under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2.

(a) Paragraph (b)(1)—''Sales load'' is no longer subject to the specific quantitative limits set forth in the Act and rules thereunder. It is nonetheless possible that the amount of ''sales load'' imposed under the Policies would need to be determined (for example, in connection with analyzing an exchange offer involving the Policies; or analyzing variations in sales load pursuant to Section 22(d) of the Act). Accordingly, Applicants seek relief permitting them to rely on paragraph (b)(1) of Rule 6e–2.

(b) Paragraph (b)(3)—Relief is requested to permit the Separate Account to rely on paragraph (b)(3)(ii) of Rule 6e–2 in order to effect compliance with Section 8(b) of the Act (regarding the filing of a registration statement with the Commission).

(c) Paragraph (b)(4)—Relief is requested to permit Applicants to apply the eligibility restrictions of Section 9 of the Act in the fashion contemplated by paragraph (b)(4).

(d) Paragraph (b)(5)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 13(a) of the Act relating to insurance regulatory authority imposing certain requirements on the investment policies of the Separate Account; and disapproval by GIAC of changes in the investment policy of the Separate Account initiated by Policy owners under circumstances contemplated by and in accordance with the requirements of paragraph (b)(5); and to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(5).

(e) Paragraph (b)(6)—Relief is requested to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(6).

(f) Paragraph (b)(7)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 15(a), (b), and (c) relating to an insurance regulatory authority disapproving advisory or underwriting contracts; disapproval by GIAC of changes in the principal underwriter for the Separate Account initiated by Policy owners; and disapproval by GIAC of changes in the investment adviser to the Separate Account initiated by Policy owners under circumstances contemplated by and in accordance with the requirements of paragraph (b)(7); and to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(7).

(g) Paragraph (b)(8)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 16(a) relating to an insurance regulatory authority disapproving or removing a member of the board of directors of a separate account under circumstances contemplated by and in accordance with the requirements of

[1] The Benchmark Value is a hypothetical value to which GIAC compares the actual Policy Account Value to determine whether and to what extent certain Policy privileges can be exercised (such as the premium skip option), and to redetermine the Basic Scheduled Premium in Policy years after the guaranteed premium period.

[2] Certain of the relief requested may not currently be necessary in light of the structure of the Separate Account as a ''unit investment trust,'' but would become necessary if the Separate Account were to be restructured as an open-end management company in the future. The Policies permit such a restructuring.

paragraph (b)(8); and to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(8).

(h) Paragraph (b)(9)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 17(f) in order to maintain separate account assets in the custody of GIAC or an affiliate thereof, in accordance with the requirements of paragraph (b)(9).

(i) Paragraph (b)(10)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 18(i) in order to provide for variable contract owner voting as contemplated by and in accordance with the requirements of paragraph (b)(10).

(j) Paragraph (b)(12)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 22(d), 22(e), and Rule 22c–1 in connection with issuance, transfer and redemption procedures for the Policies, including premium processing, premium rate structure, underwriting standards, and the benefit provided by the Policies, as contemplated by and in accordance with the requirements of paragraph (b)(12).

(k) Paragraph (b)(14)—Relief is requested to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(14).

(l) Paragraph (b)(15)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 9(a), and to facilitate the voting by GIAC of shares of management investment companies held by the Separate Account in disregard of Policy owner instructions under the circumstances contemplated by, and in accordance with the requirements of, paragraph (b)(15). Relief is also requested to permit Applicants to rely on the exemptions provided from Section 14(a), 15(a), 16(a), and 32(a)(2) in connection with any registered management investment company established by GIAC in the future in connection with the Policies, in accordance with the requirements of paragraph (b)(15), and paragraphs (b)(5), (b)(7), (b)(8), and (b)(14) of Rule 6e–2.

4. Applicants submit that the considerations that led the Commission to adopt Rules 6c–3 and 6e–2 apply equally to the Separate Account and the Policy, and that the exemptions provided by these rules should be granted to the Separate Account and to the other Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested in the application.

Redeemability

5. Section 27(i)(2)(A) provides that no registered separate account funding variable insurance contracts or its sponsoring insurance company shall sell such contract unless the contract is a ''redeemable security.'' Section 2(a)(32) defines a ''redeemable security'' as one entitling its holder to receive ''approximately his proportionate share'' of the issuer's current net asset value upon presentation to the issuer. Applicants request relief from the requirement in Section 27 that the Policies be ''redeemable securities,'' and from the definition of ''redeemable security'' set forth in Section 2(a)(32), in connection with the issuance and sale of the Policies.

6. Rule 22c–1 requires that a Policy be redeemed at a price based on the current net asset value of the Policy next computed after receipt of request for surrender. If the conditions of Rule 6e–2(b)(12) are satisfied, paragraph (b)(12) provides certain exemptions from Rule 22c–1. A contingent deferred charge such as the surrender charge may, however, not be contemplated by Rule 6e–2(b)(12), and thus may be deemed inconsistent with the foregoing provisions, to the extent that the charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after surrender or after partial withdrawal from the Policy. Accordingly, Applicants request relief from Rule 22c–1 and Rule 6e–2(b)(12), to the extent necessary to permit the deduction of the surrender charge on surrender, lapse, a lapse option taking effect, or face amount reduction by request or through partial withdrawal from a Policy.

7. Although Section 2(a)(32) does not specifically contemplate the imposition of a charge at the time of redemption, Applicants assert that such charges are not necessarily inconsistent with the definition of ''redeemable security.''

8. Applicants submit that although the deferred imposition of the surrender charge (upon surrender, lapse, or reduction in face amount by request or through partial withdrawal) may not fall within the literal pattern of all the provisions described in the application, that does not change the charge's essential nature. Moreover, the proposed amendments to Rule 6e–2 would permit a sales charge to be imposed on a contingent deferred basis. Contingent deferred charges are also authorized by Rule 6e–3(T) for contracts able to rely on that rule. Therefore, Applicants submit that the surrender charge is consistent with the principles and policies underlying limitations in Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rules 6e–2(b)(12) and (c)(1) and 22c–1 thereunder.

Class Exemption for Future Underwriters

9. Applicants seek the relief requested herein with respect to Future Underwriters. Future Underwriters will be members of the NASD.

10. Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in Section 6(c) of the Act. Further, Applicants state that, without the requested class relief, exemptive relief for any Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants submit, for all the reasons stated herein, that their request for class exemptions 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, and that an order of the Commission including such class relief, should, therefore, be granted.

Conclusion

For the reason summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30573 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22891; 812–10860]

Kemper Technology Fund, et al.; Notice of Application

November 17, 1997.

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

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from section 15(a) of the Act.