

Rights. The Board may also, with the concurrence of a majority of the Independent Directors, extend the redemption period for up to an additional 20 days.

Entergy Corporation, et al. (70-8845)

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered public utility holding company, and its wholly owned subsidiary company Entergy Power, Inc. ("EPI"), 900 South Shackleford Road, Little Rock, Arkansas 72211, (both, "Declarants"), have filed a declaration under section 12(c) of the Act and rule 46 thereunder.

EPI proposes to make one or more cash payments in an aggregate amount not to exceed \$55 million to Entergy from time to time through December 31, 1998 out of EPI's unearned surplus. As of December 31, 1995, EPI had approximately \$249,950,000 of capital or unearned surplus and cash and cash equivalents of approximately \$59,482,000. The cash equivalents of EPI include temporary cash investments of \$59,225,000, which derive from capital contributions made by Entergy to EPI in July and December 1995. Declarants state that these liquid assets are far in excess of any foreseeable capital needs of EPI. Therefore, EPI proposes to return all or most of these assets to Entergy, EPI's sole shareholder, through the proposed cash payments.

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

Margaret H. McFarland,
Deputy Secretary.

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[Rel. No. IC-21937; 812-9854]

Van Kampen American Capital Comstock Fund, et al.; Notice of Application

May 3, 1996.

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

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

APPLICANTS: Van Kampen American Capital Comstock Fund ("Comstock Fund"), Van Kampen American Capital Enterprise Fund ("Enterprise Fund"), Van Kampen American Capital Equity Income Fund ("Equity Income Fund"), Van Kampen American Capital Growth and Income Fund ("Growth and Income Fund"), Van Kampen American Capital Life Investment Trust on behalf of its

series Common Stock Fund and Multiple Strategy Fund ("Life Trust"), Van Kampen American Capital Pace Fund ("Pace Fund"), Common Sense Trust ("Common Sense Trust") on behalf of its series: Common Sense Growth Fund, Common Sense Growth and Income Fund, Common Sense II Growth Fund, Common Sense II Growth and Income Fund, Common Sense II International Equity Fund, Smith Barney/Travelers Series Fund, Inc. ("Smith Barney Fund") on behalf of its series American Capital Enterprise Portfolio, Van Kampen American Capital Equity Trust ("Equity Trust") on behalf of its series: Van Kampen American Capital Growth Fund, Van Kampen American Capital Prospector Fund, Van Kampen American Capital Value Fund (collectively, the "Public Funds"); Van Kampen American Capital Small Capitalization Fund ("Small Cap Fund"); and Van Kampen American Capital Asset Management, Inc. ("VKACAM") and Van Kampen American Capital Investment Advisory Corp. ("Advisory Corp.," together with VKACAM, the "Advisers").

RELEVANT ACT SECTIONS: Order requested under section 6(c) granting and exemption from section 12(d)(1), and under sections 6(c) and 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order amending a prior order that permits the Small Cap Fund to serve exclusively as an investment vehicle through which certain Public Funds may invest a portion of their assets in a portfolio of small capitalization stocks. The requested order would add certain parties as applicants and revise the conditions to the requested relief.

FILING DATES: The application was filed on November 17, 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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 28, 1996, 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. Person 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: Comstock Fund, Enterprise Fund, Equity Income Fund, Growth and Income Fund, Life Trust, Peace Fund, Small Cap Fund, VKACAM, and Common Sense Trust, 2800 Post Oak Boulevard, Houston, Texas 77056; Smith Barney Fund, 388 Greenwich Street, New York, New York 10013; and Equity Trust and Advisory Corp., One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

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

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 Small Cap Fund is an open-end management investment company for which VKACAM serves as investment adviser. The Small Cap Fund invests at least 80% of its assets in equity securities of companies with a market capitalization less than that of the largest 500 publicly-traded companies. Although the Small Cap Fund is registered under the Act, it does not intend to make a public offering of its shares, and has not registered its shares under the Securities Act of 1933.

2. VKACAM will not charge any advisory fee for managing the Small Cap Fund, and there is no sales load or other charges associated with distribution of the Small Cap Fund's shares. The Small Cap Fund will bear the other expenses it incurs, and such expenses thus will be borne indirectly by the public Funds that invest in the Small Cap Fund.

3. The Public Funds are open-end management investment companies for which Advisory Corp. or VKACAM serves as investment companies for which Advisory Corp. or VKACAM serves as investment adviser with investment discretion over the entire portfolio. Advisory Corp. and VKACAM are both wholly-owned subsidiaries of Van Kampen American Capital, Inc. In addition to the funds named in the application, the Public Funds may include any open-end management investment company or portfolio thereof for which Advisory Corp. or VKACAM may in the future become investment

adviser with investment discretion over the entire investment portfolio.¹

4. Limited investment in the small capitalization sector of the securities markets is an appropriate part of the investment strategy of each of the Public Funds. Under a prior order,² certain of the Public Funds may achieve this aspect of their investment strategy by investing in the Small Cap Fund.

The requested order would amend the prior order by adding certain parties as applicants and revising the conditions to the requested relief.

5. The Advisers believe that providing the Public Funds with a single investment vehicle to invest in a broadly diversified portfolio of small capitalization stocks will provide the Public Funds with the most effective exposure to the performance of that sector of the stock market while at the same time minimizing costs. The Small Cap Fund will hold a larger number of small capitalization issues, and thus be more diversified, than would a Public Fund if it were investing directly in small capitalization stocks. The Advisers expect that the Small Cap Fund's diversification will benefit both the Small Cap Fund and the Public Funds by providing greater price stability and lower volatility.

6. Each Public Fund may have, in addition to its holdings in the Small Cap Fund, some direct investments in small capitalization stocks. The advisers have adopted procedures to avoid the unnecessary expense that could occur if the Small Cap Fund were to sell a particular stock at the same time a Public Fund were to purchase it, or vice versa. The Small Cap Fund will circulate among the portfolio managers of the Public Funds a list of stocks it intends to purchase or sell. If any Public Fund's portfolio manager wishes to buy or sell a stock on the list, the Small Cap Fund will effect the transaction directly with that Public Fund. The value of the stock will be the current market price, determined in accordance with rule 17a-7. Payment will be made by simultaneous transfer of cash or, if the Public Fund wishes to alter its investment in the Small Cap Fund, or Small Cap Fund shares with an equal value. In cases where the payment for the subject stock is Small Cap Fund shares rather than cash, the transactions

will comply with the provisions of rule 17a-7(a) through (f) in all respects other than the requirement that purchases and sales be made only for cash consideration.

7. The Advisers believe that they will be able to coordinate purchases and redemptions of Small Cap Fund shares in virtually all instances. There may be occasions, however, when a single Public Fund purchases or redeems an unusually large number of Small Cap Fund shares. Such a large transaction could cause the Small Cap Fund, and thus the Public Funds not involved in the transaction, to bear significant incremental trading costs associated with the acquisition or disposition of small capitalization stocks. Accordingly, if a Public Fund plans to make an unusually large purchase or redemption of Small Cap Fund shares, the Advisers in their sole discretion may cause the transaction to be executed in kind. In the case of a purchase, the Public Fund would acquire small capitalization stocks and exchange them for Small Cap Fund shares. For a redemption, the Small Cap Fund would deliver small capitalization stocks to the Public Fund, which the Public Fund could then sell. These redemptions will be made on a *pro rata* basis, whereby the redeeming Public Fund will receive its proportionate share of each portfolio security. Such in-kind transactions will comply with rule 17a-7(a) through (f) except that the consideration for the small capitalization stocks will be Small Cap Fund shares rather than cash.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end management investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Applicants request an exemption from section 12(d)(1) because, among other holdings, the Public Funds will own 100% of the stock of the Small Cap Fund, and a Public Fund's investment

in the Small Cap fund may represent more than 5% of that Public Fund's total assets. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, 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 order under section 6(c) exempting them from section 12(d)(1) (A) and (B) to permit the Public Funds to invest in shares of the Small Cap Fund in excess of the percentage limitations of section 12(d)(1).

3. Applicants believe that the proposed arrangement does not implicate the concerns underlying section 12(d)(1). For instance, because the Advisers are under common control, there will be no incentive for any Public Fund to assert undue control over the Small Cap Fund. Applicants believe that the proposed arrangement will not result in disruptive redemptions because the Advisers will coordinate the Public Funds' purchases and sales of Small Cap Fund shares to minimize the cash flow into or out of the Small Cap Fund. In addition, the Small Cap fund will not cause investors in the Public Funds to bear two layers of fees. The Small Cap Fund will pay no advisory fee, and its shares will not be subject to any sales load. Accordingly, applicants believe that the proposed arrangement meets the standards of section 6(c).

4. Applicants also request an exemption from section 17(a) of the Act, which prohibits certain purchases and sales of securities between investment companies and their affiliated persons, as defined in section 2(a)(3) of the Act. The Public Funds and the Small Cap Fund may be deemed to be under common control because each Public Fund is advised by the Advisers, and the Advisers are under the common control of Van Kampen American Capital, Inc. Each of the Public Funds and the Small Cap Fund would therefore be an affiliated person of each other within the meaning of section 2(a)(3). Thus, purchases or sales of securities between the Small Cap Fund and a Public Fund may be prohibited by section 17(a).

5. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment

¹ The Public Funds may also include other existing open-end investment management companies advised by VKACAM or Advisory Corp. that currently do not intend to rely on the requested order, but may do so in the future in accordance with the terms and conditions thereto.

² Investment Company Act Release Nos. 19660 (Aug. 26, 1993) (notice) and 19730 (Sept. 21, 1993) (order).

company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

Applicants request an exemption under sections 6(c) and 17(b) to permit the Public Funds to purchase shares of the Small Cap Fund, and the Small Cap Fund to redeem such shares.³ Applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The Public Funds and the Small Cap Fund will be part of the same "group of investment companies," as defined in rule 11a-3 under the Act.

2. The Small Cap Fund shall not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the trustees of the Public Funds will not be "interested persons," as defined in section 2(a)(19) of the Act.

4. VKACAM will not charge any advisory fee for managing the Small cap Fund.

5. Any sales charges or service fees charged with respect to securities of the Public Funds, when aggregated with any sales charges or service fees paid by the Public Funds with respect to securities of the Small Cap Fund, shall not exceed the limits set forth in Article II, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets for each Public Fund's portfolio and the Small Cap Fund's portfolio; monthly purchases and redemptions (other than by exchange) for each Public Fund's portfolio and the Small Cap Fund's portfolio; annual expense ratios for each Public Fund's portfolio and the Small Cap fund's portfolio; and a description of any vote taken by the shareholders of the Small Cap Fund, including a statement of the percentage of votes cast for and against the proposal by the Public funds and by any other shareholders of the Small Cap Fund if any. Such information will be provided

as soon as reasonably practicable following each fiscal year-end of each of the Public Funds (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-37169; File No. SR-NASD-96-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Schedule A to the By-Laws To Amend the Allowable Exclusions and Deductions From the Definition of Gross Revenue for Member Assessment Purposes

May 6, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 4, 1996, the National Association of Securities Dealers ("NASD" or "Association") 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Following is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

NASD By-Laws

Schedule A

* * * * *

Section 5 Gross Revenue for Assessment Purposes

(a) Gross revenue is defined for assessment purposes as total income as reported on FOCUS form Part II or IIA with the following exclusions:

- [•] (1) Other income unrelated to the securities business;
- [•] [Interest and dividends;]
- [•] (2) Commodities income;
- [•] (3) Advisory fees, investment management fees and finders' fees not

directly involving the offering of securities; proxy fees; vault service fees; safekeeping fees; transfer fees; and fees for financial advisory services for municipalities;

[•] (4) Commissions derived from transactions executed on a registered national securities exchange or a foreign securities exchange (Note 1);

[•] (5) Profits or losses derived from transactions of which both the purchase and sale are executed on a registered national securities exchange, including arbitrage (Note 1); and

[•] (6) Profits and losses derived from transactions in certifications of deposit and commercial paper, which is defined to include drafts, bills of exchange, and bankers acceptances.

(b) In addition, members may deduct:

[•] (1) Any commissions, concessions or other allowances paid to another member in connection with the execution or clearance of transactions included in reported revenue. For example, a member acting as a clearing agent for another member shall deduct net amounts allowed to the non-clearing member; [and]

[•] (2) 25% of gross wrap fees charged to and received from customers and paid or allocated to investment managers or advisors[.]; and

[•] (3) *Interest and dividend expense but not in excess of related interest and dividend revenue or, alternatively, the member may deduct 40% of interest earned by the member on customer securities accounts; provided, however in addition the member may deduct the first \$50,000 of net interest and dividend revenue.*

Note 1: Income not subject to exclusion for members for whom the NASD is the designated examining authority.

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 IV 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.

³ Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. See *Keystone Custodian Funds*, 21 S.E.C. 295, 298-99 (1945). Section 6(c), along with section 17(b), is frequently used to grant relief from section 17(a) to permit an ongoing series of transactions.

¹ 15 U.S.C. 78s(b)(1)