

administrators to assess compliance with those requirements. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

**DATES:** Comments should be submitted by November 17, 1997.

**ADDRESSES:** Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension will be available for public inspection at the Communications and Public Affairs Department of the Pension Benefit Guaranty Corporation, suite 240, 1200 K Street, NW., Washington, DC, 20005-4026, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202-326-4040. (For TTY and TDD, call 800-877-8339 and request connection to 202-326-4040). The premium payment regulation can be accessed on the PBGC's home page at <http://www.pbgc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, or Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (For TTY and TDD, call 800-877-8339 and request connection to 202-326-4024).

**SUPPLEMENTARY INFORMATION:** Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") requires the Pension Benefit Guaranty Corporation ("PBGC") to collect premiums from pension plans covered under Title IV pension insurance programs. Pursuant to ERISA section 4007, the PBGC has issued its regulation on Payment of Premiums (29 CFR Part 4007). Section 4007.3 of the premium payment regulation requires plans, in connection with the payment of premiums, to file certain forms prescribed by the PBGC, and § 4007.10 requires plans to retain and make available to the PBGC records supporting or validating the computation of premiums paid.

The forms prescribed are PBGC Form 1-ES and Form 1 and (for single-employer plans only) Schedule A to Form 1. Form 1-ES is issued, with instructions, in the PBGC's Estimated Premium Payment Package. Form 1 and Schedule A are issued, with

instructions, in the PBGC's Annual Premium Payment Package.

The premium forms are needed to determine the amount and record the payment of PBGC premiums, and the submission of forms and retention and submission of records are needed to enable the PBGC to perform premium audits. The plan administrator of each pension plan covered by Title IV of ERISA is required to file one or more of the premium payment forms each year. The PBGC uses the information on the premium payment forms to identify the plans paying premiums and to verify whether plans are paying the correct amounts. That information and the retained records are used for audit purposes.

In addition, section 4011 of ERISA and the PBGC's regulation on Disclosure to Participants (29 CFR Part 4011) require plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plans' funding status and the limits on the Pension Benefit Guaranty Corporation's guarantee of plan benefits. The participant notice requirement only applies (subject to certain exemptions) to plans that must pay a variable rate premium. In order to monitor compliance with Part 4011, plan administrators must indicate on Schedule A to Form 1 that the participant notice requirements have been complied with. The PBGC has also conducted surveys of plan administrators to assess compliance.

The collection of information under the regulation on Payment of Premiums, including Form 1-ES, Form 1, and Schedule A to Form 1, and related instructions has been approved by OMB under control number 1212-0009 through February 28, 1998. This collection of information also includes the certification and surveys of compliance with the participant notice requirements (but not the participant notices themselves). The PBGC is requesting that OMB extend its approval of this collection of information for another three years. (The participant notices constitute a different collection of information that has been separately approved by OMB.)

Under the Retirement Protection Act of 1994, certain special premium rules for regulated public utility company plans cease to apply for plan years beginning after 1997. The premium forms and instructions are being revised for 1998 to reflect this change. The revised forms and instructions will also include provisions regarding the use of electronic funds transfers as an optional form of payment for premiums and for

PBGC payment of premium refunds, and will permit plan administrators whose filings are prepared by consultants to request that the PBGC no longer send them unneeded forms packages. In addition, reporting of plan-to-plan transfers will now be required only where the transferor plan ceases to exist, rather than in all cases.

The 1998 forms and instructions will eliminate multiple repetition of the rules regarding the date as of which the premium is calculated by using a new defined term, "premium snapshot date," for this purpose. Instructions and line items for variable-rate premium exemptions (which are relatively brief) are being placed before those for non-exempt filing methods to save exempt filers from having to read through the relatively lengthy filing method descriptions.

The 1998 Form 1 will also give plans a way to notify the PBGC of their participation in the PBGC's new premium "self-audit" program. Under this program, plans could elect to engage independent auditors to review their premium filings as part of the regular plan audit cycle. The PBGC expects to announce details about the "self-audit" program within the next few months.

Other appropriate revisions (e.g., clarifying and editorial changes) are also being made.

The PBGC estimates that it receives responses annually from about 49,500 plan administrators and that the total annual burden of the collection of information is about 4,042.5 hours and \$11,236,125.

Issued in Washington, DC, this 15th day of October, 1997.

**David M. Strauss,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 97-27705 Filed 10-16-97; 8:45 am]

BILLING CODE 7708-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-22848; File No. 812-10732]

**Alexander Hamilton Life Insurance Company of America, et al.**

October 9, 1997.

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

**ACTION:** Notice of application for exemption pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving a proposed substitution of securities and pursuant to Section 17(b) of the 1940 Act granting

exemptions from the provisions of Section 17(a)(1) and 17(a)(2) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order pursuant to Section 26(b) of the 1940 Act approving the substitution of shares of certain registered management investment companies ("Substituted Funds") for shares of certain other registered management investment companies currently serving as underlying investment options for variable annuity contracts and variable life insurance policies ("Replaced Funds"). Applicants also seek an order, pursuant to Sections 6(c) and 17(b) of the 1940 Act, granting exemptions from Section 17(a) to permit Applicants to carry out certain of the substitutions wholly or partly in-kind.

**Applicants:** Alexander Hamilton Life Insurance Company of America ("AH Life"), Alexander Hamilton Variable Annuity Separate Account ("AH Separate Account") (together, the "AH Applicants"), Chubb Life Insurance Company of America ("Chubb Life"), Chubb Separate Account A ("Chubb Separate Account") (together, the "Chubb Applicants"), Jefferson-Pilot Life Insurance Company ("JP Life") and Jefferson-Pilot Separate Account A ("JP Separate Account") (together, the "JP Applicants") (hereinafter referred to collectively as the "Applicants," "Life Company Applicants," and "Separate Account Applicants" as appropriate).

**Filing Date:** The application was filed on July 22, 1997, and amended on October 1, 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 on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 3, 1997, and 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 interest, the reason for the request and issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Shari J. Lease, Esq., Chubb Life Insurance Company of America, One Granite Place, Concord, New Hampshire 03301.

**FOR FURTHER INFORMATION CONTACT:** Zandra Y. Bailes, Senior Counsel, or Mark C. Amorosi, Branch Chief, 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 of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

### Applicants' Representations

1. The Life Company Applicants are affiliated stock life insurance companies wholly owned by Jefferson Pilot Corporation. Jefferson-Pilot Corporation acquired AH Life on October 6, 1995, with an effective date of September 30, 1995. The purchase of Chubb Life was closed on May 13, 1997, with an effective date of April 30, 1997.

2. AH Life, a stock life insurance company organized under the insurance laws of Michigan, is engaged primarily in the sale of annuity contracts and life insurance policies. AH Life is the sponsor and depositor of the AH Separate Account.

3. Chubb Life, a stock life insurance company chartered under the laws of Tennessee and redomesticated to New Hampshire on July 1, 1991, is authorized to write life insurance business in Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, the District of Columbia, and all states of the United States except New York. Chubb Life is the sponsor and depositor of the Chubb Separate Account.

4. JP Life, a stock life insurance company organized under the insurance laws of North Carolina, is primarily engaged in the writing of whole life, term, endowment, and annuity policies on an individual ordinary basis, plus industrial and group insurance. JP Life is the sponsor and depositor of the JP Separate Account.

5. The Separate Account Applicants are segregated asset accounts registered under the 1940 Act as unit investment trusts. The AH Separate Account is used to fund certain variable annuity contracts issued by AH Life and is divided into eight sub-accounts, seven of which invest in corresponding series (each a "Fund") of the Alexander Hamilton Variable Insurance Trust (the "Trust") with the remaining sub-account investing in the Federated Prime Money Fund II of the Federated Insurance Series ("Federated Prime Money Fund II"). Chubb Separate Account is used to fund certain variable life insurance policies issued by Chubb Life and is divided into 13 sub-accounts, nine of which invest in corresponding series (each a "Portfolio") of the Chubb America

Fund, Inc. ("CAF") with the remaining sub-accounts investing in the Templeton International Fund of Templeton Variable Products Series Fund, the High Income Portfolio of Variable Insurance Products Fund ("Fidelity VIP"), the Contrafund Portfolio and the Index 500 Portfolio of Variable Insurance Products Fund II ("Fidelity VIPII"). JP Separate Account is used to fund certain variable annuity contracts issued by JP Life, and is divided into 16 sub-accounts, two of which invest in shares of the Trust, two of which invest in shares of Oppenheimer Variable Account Funds, eight of which invest in shares of Fidelity VIP and Fidelity VIPII, two of which invest in shares of The Alger American Fund, and two of which invest in shares of the MFS Variable Insurance Trust.

6. The Trust is an open-end management investment company, organized as a Massachusetts business trust. The Trust consists of seven Funds, each of which operates as a separate investment fund, that have differing investment objectives, policies, and sub-advisers. Shares of the Funds are currently available to the public only through the purchase of certain variable annuity contracts issued by AH Life and JP Life and to retirement plans qualified under the Internal Revenue Code of 1986, as amended ("qualified retirement plans"). Alexander Hamilton Capital Management, Inc. acts as the Trust's investment adviser and has retained other unaffiliated investment advisers to act as sub-advisers who provide the day-to-day portfolio management for each Fund.

7. CAF is an open-end, diversified management investment company incorporated in Maryland. Shares of CAF's Portfolios are available for purchase only by the divisions of Chubb Life's separate accounts and qualified retirement plans. Chubb Investment Advisory Corporation ("CIAC") acts as CAF's investment manager and has retained other investment advisers to act as sub-advisers in providing the day-to-day portfolio management of each portfolio of CAF. CAF consists of nine Portfolios, each of which is a separate investment portfolio, that have differing investment objectives.

8. The Oppenheimer Bond Fund is one series of Oppenheimer Variable Account Funds which is organized as a Massachusetts business trust. Oppenheimer Variable Account Funds is a diversified open-end investment company consisting of nine separate funds. Shares of Oppenheimer Variable Account Funds are offered for purchase by insurance company separate

accounts as the investment medium for variable life insurance policies and variable annuity contracts. Oppenheimer Funds, Inc. acts as investment adviser for the Oppenheimer Bond Fund.

9. The Federated Prime Money Fund II is an investment portfolio of Federated Insurance Series, an open-end management investment company, which is organized as a Massachusetts business trust. Federated Advisers acts as investment adviser for Federated Prime Money Fund II.

10. Jefferson-Pilot Corporation, the parent company of the Life Company Applicants, and the Life Company Applicants have determined to maintain only one proprietary mutual fund as an underlying investment option for the variable annuity contracts ("Contracts") and variable life insurance policies ("Policies") issued by the Applicants as well as other variable life insurance policies and variable annuity contracts which the Applicants may offer in the future. Applicants state that it has been determined that CAF should be the surviving proprietary investment option. Applicants, therefore, are proposing the substitutions described in the application and summarized below (the "Substitutions"). After the Substitutions have been effected, the Trust will be de-registered and will cease operations. Applicants will continue to offer certain unaffiliated funds as investment options.

11. Applicants state that CAF has been in existence since 1984 and as of March 31, 1997 had total net assets of \$362.7 million. CIAC does not waive or assume any of the expenses of CAF. In contrast, the Trust has been in existence since 1994 and did not commence operations until February 1996. As of March 31, 1997, the Trust had net assets of \$37.3 million. As a result of the Trust's small size, the Trust's investment adviser has voluntarily waived or assumed expenses for all of the Trust's Funds. Moreover, the Trust's Funds have not generated substantial interest among purchasers of the Contracts. The Life Company Applicants believe that the CAF Portfolios are generally more responsive to the preferences of purchasers of the Contracts, while offering a larger fund with similar investment objectives, providing a potential for economies of scale.

12. Applicants note that the one exception to substituting the CAF Portfolios relates to the CAF Bond Portfolio. Given the sale of Chubb Life to Jefferson-Pilot Corporation, the former owner of Chubb Life and Jefferson-Pilot Corporation have

determined that Chubb Asset Managers, Inc. will no longer be available to act as sub-adviser for the CAF Bond Portfolio. It has been determined that the Oppenheimer Bond Fund provides a better investment alternative than continuation of the CAF Bond Portfolio with a new adviser.

13. In addition, the substitution involving the unaffiliated mutual fund, Federated Prime Money Fund II, is being proposed. The actual expense ratio of the CAF Money Market Portfolio is lower than that of the Federated Prime Money Fund II, and its performance is slightly better since inception.

#### **The Proposed Transactions**

1. The AH Applicants propose that AH Life substitute: (1) Shares of the Money Market Portfolio of CAF for shares of the Federated Prime Money Fund II; (2) shares of the Balanced Portfolio of CAF for shares of the Balanced Fund of the Trust; (3) shares of the Growth and Income Portfolio of CAF for shares of the Growth & Income Fund of the Trust; (4) shares of the Capital Growth Portfolio of CAF for shares of the Growth Fund of the Trust; (5) shares of the Emerging Growth Portfolio of CAF for shares of the Emerging Growth Fund for the Trust; (6) shares of the World Growth Stock Portfolio of CAF for shares of the International Equity Fund of the Trust; (7) shares of the Oppenheimer Bond Fund for shares of the Investment Grade Bond Fund of the Trust; and (8) shares of the Oppenheimer Bond Fund for shares of the High Yield Bond Fund of the Trust.

2. The Chubb Applicants propose that Chubb Life substitute shares of the Oppenheimer Bond Fund for shares of the Bond Portfolio of CAF.

3. The JP Applicants propose that JP Life substitute: (1) Shares of the Capital Growth Portfolio of CAF for shares of the Growth Fund of the Trust; and (2) shares of the Emerging Growth Portfolio of CAF for shares of the Emerging Growth Fund of the Trust.

4. Applicants state that each of the Life Company Applicants will redeem for cash or kind of the shares of each Replaced Fund that it currently holds on behalf of its applicable Separate Account Applicant at the close of business on the date selected for the Substitutions. It is anticipated that the redemptions of the Federated Prime Money Fund II, the Trust Investment Grade Bond Fund, the Trust High Yield Bond Fund and the CAF Bond Fund will be redeemed all for cash. The Trust Investment Grade Bond Fund, the Trust High Yield Fund, and the CAF Bond

Fund will be replaced by the Oppenheimer Bond Fund. With regard to all other Replaced Funds, it is anticipated that redemptions will be partly or wholly in-kind, and thus purchases of the applicable Substituted Funds will be paid for partly or wholly with portfolio securities. Thus, the Replaced Funds whose shares will be redeemed wholly or partly in-kind are the Trust's Balanced, Growth and Income, Growth, Emerging Growth and International Equity Funds.

5. The Life Company Applicants, each on behalf of its applicable Separate Account Applicant, will simultaneously place a redemption request with each applicable Replaced Fund and a purchase order with each applicable Substituted Fund so that each purchase will be for the exact amount of the redemption proceeds. As a result, at all times, monies attributable to contract owners and policy owners ("Owners") then invested in the Replaced Funds will remain fully invested and will result in no change in the amount of any Owner's contract or policy value, death benefit or investment in the applicable Separate Account Applicant.

6. The Trust will effect the redemptions-in-kind and the transfers of portfolio securities in a manner that is consistent with the investment objectives, policies and restrictions, and federal tax law and 1940 Act diversification requirements applicable to the Substituted Fund. AH Life and JP Life each will take appropriate steps to assure that the portfolio securities selected for redemptions-in-kind are suitable investments for the Substituted Funds.

7. Applicants state that the Life Company Applicants have undertaken to assume all transaction costs and expenses relating to the Substitutions, including any direct or indirect costs of liquidating the assets of the Replaced Funds so that the full net asset value of redeemed shares of the Replaced funds held by the each Separate Account Applicant will be reflected in the Owners' Policy values' accumulation unit or annuity unit values following the Substitutions.

8. As part of the Substitutions, AH Life will combine the sub-accounts invested in the Trust's Investment Grade Bond Fund and the Trust's High Yield Bond Fund and designate the continuing sub-account as the Oppenheimer Bond Fund Sub-account.

9. Each of the Life Company Applicants will supplement the prospectus for the applicable Separate Account Applicant to reflect the proposed Substitutions. Within five days after the Substitutions, the

Applicants will send to their respective Owners written notice of the Substitutions (the "Notice") identifying the shares of the Replaced Funds which have been eliminated and the shares of the Substituted Funds which have been substituted. Applicants will include in such mailing the prospectuses for the Substituted Funds and the applicable revised prospectus or supplement for the Contracts and Policies of the Separate Account Applicants describing the Substitutions. Owners will be advised in the Notice that for a period of 31 days from the date of the Notice, Owners may transfer all assets, as substituted, to any other available sub-account, without limitation, without charge and without any such transfer counting as one of the limited number of transfers permitted in a contract or policy year free of charge ("Free Transfer Period").

10. Following the Substitution, Owners will be afforded the same contract rights, including surrender and other transfer rights with regard to amounts invested under the Contracts and Policies, as they currently have.

#### **Applicants' Legal Analysis and Conditions**

1. Section 26(b) of the 1940 Act provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security unless the Commission shall have approved such substitution." The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent scrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both.

2. Applicants represent that the purposes, terms and conditions of the Substitutions are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses Section 26(b) was designed to prevent. Applicants submit that the Substitutions involving the Trust are appropriate solutions to the insufficient size of the Trust which makes it difficult to achieve consistent investment performance and reduce operating expenses. Given the longer operating history of CAF and attendant investment performance, as well as its much larger asset size and

resultant lack of fee waivers or assumption of expenses, Applicants maintain that it is in the best interest of the Owners to have CAF act as an underlying investment option for the variable products as opposed to the Trust. With regard to the CAF Bond Portfolio, the Chubb Applicants represent that the unavailability of the current sub-adviser as a result of the sale of Chubb Life to Jefferson-Pilot Corporation supports the selection of the Oppenheimer Bond Fund as an alternative investment.

3. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(b) was designed to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons: (a) The Replaced Funds have objectives, policies and restrictions sufficiently similar to the objectives of the Substituted Funds so as to continue to fulfill the Owners' objectives and risk expectations; (b) after receipt of the Notice informing an Owner of the Substitutions, an Owner may request that assets be reallocated to another sub-account or division selected by the Owner, and the Free Transfer Period provides sufficient time for Owners to consider their reinvestment options; (c) the Substitutions, in all cases, will take place at the net asset value of the respective shares, without the imposition of any transfer or similar charge; (d) the Life Company Applicants have undertaken to assume the expenses and transaction costs, including, but not limited to, legal and accounting fees and any brokerage commissions relating to the Substitution and are effecting the redemption of shares in a manner that attributes all transaction costs to the Life Company Applicants; (e) the Substitutions in no way will alter the insurance benefits to Owners or the contractual obligations of the Life Company Applicants; (f) the Substitutions in no way will alter the tax benefits to Owners; and (g) the Substitutions are expected to confer certain economic benefits on Owners by virtue of the enhanced asset size and lower expenses of the Substituted Funds, as described in the application.

4. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling any security or other property to such registered investment company, or an affiliated person of an affiliated person, from purchasing any security or

other property from such registered investment company.

5. Applicants state that certain of the Substitutions will be effected, partly or wholly, through redemptions and purchases in-kind and may be deemed to entail the indirect purchase of shares of the related Substituted Funds with portfolio securities of the Replaced Funds, and the indirect sale of securities of the Replaced Funds for shares of the Substituted Funds, and thus may entail each such Fund in the purchase and sale of such securities, acting as principal, to the other Fund in contravention of Section 17(a).

6. Moreover, immediately following the Substitutions, AH Life will combine the sub-accounts invested in the Trust's Investment Grade Bond and High Yield Bond Funds and designate the continuing sub-account as the Oppenheimer Bond Fund Sub-Account. AH Life could be said to be transferring unit values between its sub-accounts. The transfer of unit values could be said to involve purchase and sale transactions between sub-accounts that are affiliated persons. The sale and purchase transactions between sub-accounts could be said to come within the scope of Sections 17(a)(1) and 17(a)(2) of the 1940 Act, respectively.

7. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

8. Applicants represent that the terms of the proposed transactions: (a) Are reasonable and fair, including the consideration to be paid and received, and do not involve overreaching; (b) are consistent with the investment policies of the Replaced Funds of the Trust; and (c) are consistent with the general purposes of the 1940 Act. Applicants state that the transactions effecting the Substitutions will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c-1 thereunder. Moreover, Applicants state that, in effecting the redemptions in-kind and transfers, the Trust will comply with the requirements of Rule 17a-7 under the 1940 Act to the extent possible and the

procedures established thereunder by the Board of Trustees of the Trust. Applicants submit that Owner interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. In each case, Applicants assert that the consideration to be received and paid is, therefore, reasonable and fair.

9. Applicants assert that the investment objectives of each of the Substituted Funds are sufficiently similar to the investment objectives of the Replaced Funds. In this regard, the Substitutions are consistent with Commission precedent pursuant to Section 17 of the 1940 Act. Applicants also assert that the Substitutions are consistent with the general purposes of the 1940 Act, as enunciated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent.

10. Section 6(c) of the 1940 Act provides that the Commission may grant an order exempting persons and 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 policies and provisions of the 1940 Act. Applicants submit that the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors, as required by Section 6(c) of the 1940 Act. Owners will be fully informed of the terms of Substitutions through the prospectus supplements and the Notice, and will have an opportunity to reallocate investments prior to and following the Substitutions.

## Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitutions and related transactions involving in-kind redemptions and the combination of certain separate account sub-accounts should be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-27545 Filed 10-16-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26764]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 10, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 31, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Western Resources, Inc. (70-9097)

Western Resources, Inc. ("WRI"), located at 818 Kansas Avenue, Topeka, Kansas 66612, a Kansas public utility holding company exempt under section 3(a) pursuant to rule 2 from all provisions of the Act except section 9(a)(2), has filed an application under sections 9(a)(2) and 10 of the Act in connection with a proposed sale of its gas utility operations.

WRI, itself a public utility company, is engaged through its Kansas Power & Light Company division in the generation, purchase, transmission, distribution and sale of electric energy in Kansas and the transportation and sale of natural gas predominantly in Kansas, with some small operations in Oklahoma. WRI provides retail electric service to approximately 329,000 customers in Kansas and northeastern Oklahoma. WRI also provides wholesale

electric generation and transmission services to numerous municipal customers in Kansas, and, through interchange agreements, to surrounding integrated systems. WRI provides natural gas service to approximately 648,000 retail customers in Kansas and northeastern Oklahoma. WRI is regulated as a public utility with respect to retail electric and gas rates and other matters by the Kansas Corporation Commission ("KCC") and with respect to retail gas rates and other matters by the Oklahoma Corporation Commission ("OCC"). WRI is also subject to the jurisdiction of the Federal Energy Regulatory Commission, including jurisdiction with respect to rates for sales of electricity for resale.

WRI has one utility subsidiary, Kansas Gas and Electric Company ("KGE").<sup>1</sup> KGE provides retail electric service to approximately 277,000 residential, commercial and industrial customers in Kansas and wholesale electric generation and transmission services to numerous municipal customers in Kansas and, through interchange agreements, to surrounding integrated systems. KGE does not own or operate any gas properties. KGE has one active subsidiary, Wolf Creek Nuclear Operating Corporation ("Wolf Creek"), a Delaware Corporation which is 47% owned by KGE and operates the Wolf Creek Generating Station on behalf of the plant's owners, including KGE.<sup>2</sup> KGE is regulated as a public utility company with respect to retail electric rates and other matters by the KCC. It is also regulated by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, in connection with its ownership interest in Wolf Creek.

WRI also has numerous direct and indirect non-utility subsidiaries, including (1) Westar Capital, Inc. ("Westar Capital"), a Kansas corporation that is holding company for certain of WRI's non-regulated activities,<sup>3</sup> (2)

<sup>1</sup> WRI has entered into an Agreement and Plan of Merger dated February 17, 1997 with Kansas City Power & Light Company ("KCPL"), a public utility company which operates as an electric utility company in Kansas and Missouri ("KCPL Merger Agreement"). The KCPL Merger Agreement calls for KCPL to be acquired by WRI, after which, WRI would claim, or seek an order from the Commission granting, an exemption under Section 3(a).

<sup>2</sup> KGE has obtained no-action assurance from the Commission regarding its ownership interest in Wolf Creek. SEC No-Action Letter (June 26, 1995).

<sup>3</sup> Westar Capital's subsidiaries and affiliates are: (i) Hanover Compressor Company (offers compression services to the natural gas industry), (ii) Westar Financial Services, Inc. (funds activities of other WRI subsidiaries), (iii) Wing Columbia, L.L.C. (invests in power generation projects in Columbia, South America), (iv) WestSec, Inc.

Continued