

November 23, 1996, each Board had five members, two of whom were not "interested persons" as that term is defined by Section 2(a)(19) of the 1940 Act. One of the disinterested Trustees died on November 23, 1996, reducing each Board to four members, only one of whom is not an interested person. The remaining disinterested Trustee expressed his intention to resign effective February 1, 1997. Following the resignation, each Board will be reduced to three members, all of whom will be interested persons.

3. The Boards are seeking diligently to identify replacements for the two disinterested Trustees. The remaining Trustees must approve the nomination of suitable candidates. Shareholders of the Trusts and owners of the Contracts also must approve the new nomination of the new Trustees.

4. No actions will be taken by the Boards that require a vote of disinterested Trustees until after the Boards have been fully constituted and shareholders have elected the nominees. Nor have any such actions been taken since November 23, 1996.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 10(e)(3) of the 1940 Act extending the sixty day period provided for by Section 10(e)(2) of the 1940 Act to March 21, 1997. Applicants further request that the order grant retroactive relief for the period from January 21, 1997, the expiration date of the initial sixty day period, to the date on which the order is issued.

2. Section 10(a) of the 1940 Act provides, among other things, that no registered investment company shall have a board of directors more than 60 percent of whose members are persons or officers or employees of such registered company. Section 10(e) of the Act sets forth time limitations for filing vacancies created by reason of the death, disqualification or bona fide resignation of any director(s). Section 10(e)(2) further provides that the operation of Section 10(a) shall be suspended for a period of sixty days if a vote of shareholders is required to fill the vacancy(ies). Section 10(e)(3) authorizes the Commission, by order upon application, to prescribe a longer period as not inconsistent with the protection of investors.

3. Section 16(a) of the 1940 Act requires, in pertinent part, that immediately after filling a vacancy on a board of directors, at least two-thirds of the directors shall have been elected to such office by the shareholders of the registered investment company.

Applicants must submit the election of the Boards to the shareholders of the Trusts to comply with Section 16(a).

4. Applicants assert that the Boards have not yet identified appropriate candidates to fill the two vacancies which must be filled by Trustees who are not interested persons of the Trusts. Applicants represent that their efforts have been pursued with diligence, but to date have not resulted in the selection of appropriate nominees.

5. Applicants represent that once they have identified, interviewed and cleared potential nominees, their nomination will be considered at the meetings of the Boards scheduled for February 25, 1997. At those meetings, Applicants anticipate that the Boards will authorize the preparation and filing with the Commission of proxy materials relating to the election of the Boards and other significant matters that require shareholders approval.

6. Applicants assert that it is in the best interests of the separate accounts investing in the Applicants and the owners of variable annuity contracts funded through those separate accounts to take the necessary time to identify qualified and competent disinterested Trustees. Applicants represent that efforts have been undertaken and are continuing to obtain two disinterested Trustees, but that is now appears that the vacancies will not be filled until March 21, 1997.

7. Applicants represent that retroactive relief is necessary because they were not immediately notified of the death of one disinterested Trustee, and that sixty days is not sufficient time to prepare and file with the Commission, and for the Commission to consider, issue a notice and grant an order upon, an application for exemptive relief.

Conclusion

For the reasons stated above, Applicants assert that their requests for relief are consistent with the protection of investors.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. IC-22485; File No. 812-10286]

The Mutual Life Insurance Company of New York, et al.

January 29, 1997.

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

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

APPLICANTS: The Mutual Life Insurance Company of New York ("MONY"), MONY Life Insurance Company of America ("MONY America," and collectively with MONY, "the Companies") and MONY America Variable Account A ("MONY America Account," and collectively with the MONY Account, "the Accounts").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 26(b) of 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 Sections 17(a)(1) and 17(a)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the U.S. Government Series ("U.S. Government Portfolio") of OCC Accumulation Trust ("Trust") for shares of the Bond Series ("Bond Portfolio") of the Trust. Applicants also seek an exemption from Section 17(a)(1) and 17(a)(2) of the 1940 Act to the extent necessary to permit Applicants to carry out the above referenced substitution in part by redeeming shares of the Bond Portfolio in-kind and using the redemption proceeds to purchase shares of the U.S. Government Portfolio.

FILING DATE: The application was filed on August 7, 1996.

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 the applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on February 24, 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. Any person may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Frederick C. Tedeschi,

Esq., The Mutual Life Insurance Company of New York, 500 Frank W. Burr Blvd., Teaneck, N.J. 07666-6888.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Patrice M. Pitts, 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 Branch of the Commission.

Applicants' Representations

1. MONY is a mutual life insurance company organized in the state of New York. MONY America, a wholly owned subsidiary of MONY, is a stock insurance company organized in the state of Arizona.

2. MONY established the MONY Account on November 28, 1990, and MONY America established the MONY America Account on March 27, 1987, in accordance with the laws of the States of New York and Arizona, respectively. The Accounts are segregated asset accounts registered with the Commission as unit investment trusts pursuant to the provisions of the 1940 Act and are used to fund certain individual and group flexible payment variable annuity contracts issued by the Companies and sold under the name "ValueMaster" ("ValueMaster Contracts").

3. The Accounts currently are divided into various sub-accounts ("Sub-Accounts"), five of which are available to owners of ValueMaster Contracts ("ValueMaster Contractowners") and which reflect the investment performance of the Bond, Equity, Managed, Money Market and Small Cap Series of the Trust. ValueMaster Contractowners may transfer account values among the Sub-Accounts without any charge up to four times a year. For any additional transfers, a transfers, a transfer charge is not imposed currently. However, the Companies reserve the right to impose a charge. As of June 30, 1996, 3.7% of the total assets invested in the Accounts by ValueMaster Contractowners were allocated to the Bond Portfolio.

4. The ValueMaster Contracts are offered exclusively by agents of Oppenheimer Life Agency, Ltd., ("Oppenheimer Life"), an affiliate of OpCap Advisors, a registered investment adviser and the Trust's investment manager. Oppenheimer Life is no longer actively selling the ValueMaster Contracts.

5. The Trust was established on May 12, 1994, and is a registered open-end

management investment company consisting of seven separate series ("Portfolios") with differing investment objectives, policies and restrictions. All five of the Portfolios of the Trust supporting the ValueMaster Contract commenced operations on September 16, 1994, when a predecessor registered investment company (the "Old Trust") with portfolios corresponding to five of the current seven portfolios of the Trust was effectively reorganized into twin investment companies, the Old Trust and the Trust. Before September 16, 1994, the portfolios of the Old Trust had acted as the funding vehicles for the ValueMaster Contracts. The Trust currently also offers shares of its Portfolios to accounts of other unaffiliated life insurance companies, to serve as the investment vehicle for their respective variable annuity and variable life insurance contracts.

6. The Bond Portfolio seeks a high level of current income consistent with moderate risk of capital and maintenance of liquidity and, under normal market conditions, invests in U.S. Government securities and short- and intermediate-term, investment grade corporate bond and debt obligations. Performance returns ranked the Bond Portfolio 21st out of 33, 31st out of 34, and last out of 26 in its peer group, as reported by Lipper Variable Insurance Products Performance Analysis Service ("Lipper Universe Peer Group"), for the six-month, and the one- and five-year period ending June 30, 1996.

7. As of June 30, 1996, the Bond Portfolio had assets of \$4,794,283, of which \$2,563,131 were attributable to fewer than 100 ValueMaster Contractowners. The only other shareholder of the Bond Portfolio besides the Accounts is a segregated account of an unaffiliated insurance company, which account is exempt from registration under the 1940 Act (the "unregistered account"). According to OpCap Advisors, the unregistered account intends to redeem its shares of the Bond Portfolio. For the six months ending June 30, 1996, and for calendar year 1995, net redemptions by the Accounts of shares of the Bond Portfolio, exclusive of dividend or capital gain reinvestments, total \$293,852 and \$1,232,852, respectively.

8. The U.S. Government Portfolio commenced investment operations on January 3, 1995, at which time OpCap Advisors contributed \$300,000 in seed capital to that Portfolio. Like the Bond Portfolio, the U.S. Government Portfolio seeks a high level of current income and the protection of capital by investing exclusively in debt obligations,

including a variety of U.S. government securities. Under normal conditions the U.S. Government Portfolio invests at least 65 percent of its total assets in U.S. government securities. Performance returns ranked the U.S. Government Portfolio 2nd out of 30, and 6th out of 30 in its Lipper Universe Peer Group for the first six months of 1996, and the one-year period ending June 30, 1996.

9. As of June 30, 1996, the U.S. Government Portfolio had assets of \$2,544,472, which included OpCap Advisors' seed capital contribution. Shares of the U.S. Government Portfolio currently also are offered by two unaffiliated insurance companies as a funding vehicle for their variable products. For the six months ending June 30, 1996, and for calendar year 1995, net sales of shares of the U.S. Government Portfolio, exclusive of dividend or capital gain reinvestments, totaled \$1,104,391 and \$1,046,574, respectively.

10. Under the Investment Advisory Agreement ("Advisory Agreement") between the Trust and OpCap Advisors, OpCap Advisors provides management and investment advisory services to the Trust and its Portfolios and is compensated by the Trust for services rendered to the Bond and U.S. Government Portfolios on a monthly basis at the annual rate of .50 percent of the average daily net assets of the Bond Portfolio and .60 percent of the average daily net assets of the U.S. Government Portfolio. Under the Advisory Agreement, OpCap Advisors has agreed to limit the total expenses of these Portfolios to 1.25 percent of their respective average daily net assets. Moreover, under a provision of the Advisory Agreement, OpCap Advisors guarantees that the total expenses of the Portfolios, in any fiscal year, exclusive of taxes, interest, brokerage fees and distribution expense reimbursements, shall not exceed the most restrictive state law provisions in effect in any state. In addition, OpCap Advisors has voluntarily agreed to limit the total expenses of the Bond and the U.S. Government Portfolios, through April 30, 1997, to 1.00 percent of their respective average daily net assets. As of June 30, 1996, the actual total expenses of both the Bond and the U.S. Government Portfolios exceeded both the voluntary expense limitation of 1.00 percent and the operative contractual expense limitation of 1.25 percent (Bond Portfolio at 1.45 percent and U.S. Government Portfolio at 3.33 percent). OpCap Advisors waived its fees and reimbursed both the Bond and the U.S. Government Portfolios so that the net expenses of those Portfolios remained at

1.00 percent of their respective average daily net assets.

The Proposed Substitution

11. Applicants propose to substitute shares of the U.S. Government Portfolio for all shares of the Bond Portfolio attributable to the ValueMaster Contracts ("Substitution"). The ValueMaster Contractowners will not bear any expenses and transaction costs of the proposed Substitution, including any applicable brokerage commissions; any such expenses will be borne by OpCap Advisors. Soon after the filing of this application for exemptive relief, the prospectuses for the Accounts will be supplemented to reflect the proposed Substitution and distributed to all ValueMaster Contractowners. The Substitution will occur as soon as practicable after receipt of an order. As of the effective date of the Substitution, the Companies will redeem shares of the Bond Portfolio. Simultaneously, the Companies will use the proceeds to purchase the appropriate number of shares of the U.S. Government Portfolio. The Substitution will take place at relative net asset values of the Bond and U.S. Government Portfolios, with no change in the amount of any ValueMaster Contractowner's account values.

12. To the extent the Bond Portfolio incurs brokerage fees and expenses in connection with the redemption by the Companies of its shares, these expenses would be charged to the applicable Portfolio, but borne by OpCap Advisors. To alleviate the impact of any such brokerage fees and expenses upon the Bond Portfolio and ultimately OpCap Advisors, the Trust and OpCap Advisors propose that the redemption of the Bond Portfolio shares be accomplished, in part, by "in kind" transactions. Under the Proposal, the Trust would transfer to the Companies their proportionate interest in cash and/or securities held by the Bond Portfolio on the date of the Substitution, and the Companies will then use such cash and/or securities to purchase shares of the U.S. Government Portfolio. The valuation of any "in kind" transfers will be on a basis consistent with the normal valuation procedures of the Bond and U.S. Government Portfolios.

13. Within five days after the Substitution, the Companies will send to ValueMaster Contractowners written notice of the Substitution stating that shares of the Bond Portfolio have been eliminated and that shares of the U.S. Government Portfolio have been substituted. The Companies will include in such mailing a second supplement to the prospectuses of the

Accounts which discloses that the Substitution has occurred. The notice will advise ValueMaster Contractowners that for a period of thirty days from the mailing of the notice, the "Free Transfer Period," they may transfer all assets, as substituted, to any other available Sub-Account, without limitation and without the transfer being deemed a transfer for purposes of determining any transfer charge. Following the Substitution, ValueMaster Contractowners will be afforded the same contract rights, including surrender and other transfer rights, as they currently have. Any applicable surrender (or contingent deferred sales) charges will continue to be imposed, but will not be affected in any way by the Substitution.

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 for such security unless the Commission shall have approved such substitution." Applicants assert that 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 unscrutinized substitutions which might, in effect, force investors dissatisfied with the substituted security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial purchase payments, an additional sale load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Section 17(a)(1) of the 1940 Act prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any such affiliated person, acting as principal, from purchasing any security or other property from such registered investment company. Applicants state that the transfer of proceeds emanating from the in-kind redemption of shares of the Bond Portfolio from the Bond Sub-Account to the U.S. Government Sub-

Account could be deemed to involve a purchase and sale between the Bond Sub-Account and U.S. Government Sub-Account, each of which is an affiliated person of the other.

3. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from the provisions of Section 17(a) provided: (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 purpose of the 1940 Act.

4. Applicants submit that the purposes, terms and conditions of the proposed Substitution are consistent with the principles and purposes of Section 26(b) of the 1940 Act and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants assert that a Substitution is an appropriate solution to the limited ValueMaster Contractowner interest or investment in the Bond Portfolio, which currently is, and in the future may be, of insufficient size to promote consistent investment performance or to reduce operating expenses. Applicants further assert that the proposed Substitution will not cause the fees and charges currently being paid by ValueMaster Contractowners to be greater after the Substitution than before the Substitution.

5. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended 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 objectives, policies, and restrictions of the Bond Portfolio are substantially similar to the objectives, policies, and restrictions of the U.S. Government Portfolio; (b) OpCap Advisors voluntarily agreed to limit the total operating expenses of both the U.S. Government and Bond Portfolios, through April 30, 1997, to 1.00 percent of their respective average daily net assets; (c) if a ValueMaster Contractowner so requests during the Free Transfer Period, Contract value affected by the Substitution will be reallocated for investment in any other available Sub-Account selected by the ValueMaster Contractowner; (d) the Substitution will be a net asset value of the respective Portfolio shares, without

imposition of any transfer or similar charge; (e) OpCap Advisors will assume any expenses and transaction costs relating to the Substitution, including legal and accounting fees and any brokerage commissions; (f) the Substitution will not alter the insurance benefits or contractual obligations of the Companies to ValueMaster Contractowners, or the tax benefits and consequences to ValueMaster Contractowners; and (g) the Substitution is expected to confer certain modest economic benefits to ValueMaster Contractowners by virtue of the possible enhanced asset size of the U.S. Government Portfolio, and to avoid the detriments associated with investment in the Bond Portfolio, whose assets are declining. In this regard, Applicants also note that, within five days after the Substitution, the Companies will send to ValueMaster Contractowners written notice of the Substitution stating that shares of the Bond Portfolio have been eliminated and that shares of the U.S. Government Portfolio have been substituted therefor. The Companies will include in such mailing a second supplement to the prospectuses of the Accounts which discloses that the Substitution has occurred. For the reason cited above, Applicants also contend that the terms of the proposed Substitution meet the standards of Section 17(b).

6. Applicants assert that the decreasing asset base of the Bond Portfolio, the impending redemption of Bond Portfolio shares by the unregistered account, and the mediocre performance results of the Bond Portfolio have made it difficult for that Portfolio to retain current investors and attract new investors. Moreover, Oppenheimer Life Agency's limited effort in selling the ValueMaster Contract, coupled with a constant amount of fixed costs incurred by the Bond Portfolio, can reasonably be expected to lead to an increase in the actual expenses of the Bond Portfolio in the future. In contrast, the actual expenses of the U.S. Government Portfolio can reasonably be expected to decrease in the future: net sales of U.S. Government Portfolio shares from its inception to date suggest that the asset base of that Portfolio will continue to grow; superior performance results should assist the U.S. Government Portfolio in retaining existing investors and attracting new investors; and the use of the U.S. Government Portfolio in various variable products should increase distribution capabilities.

7. Applicants also note that the continuous accumulation of assets of

the U.S. Government Portfolio and positive reaction of investors of that Portfolio has persuaded OpCap Advisors to extend its voluntary agreement to limit the operating expenses of the U.S. Government Portfolio to 1.00 percent of its average daily net assets past April 30, 1997, to at least April 30, 1998. OpCap Advisors has not assured the Companies that it will do the same for the Bond Portfolio. Therefore, the total expense ratio of the Bond Portfolio may increase after April 30, 1997, whereas, through April 30, 1998, the total expenses of the U.S. Government Portfolio are guaranteed not to exceed 1.00 percent of its average daily net assets.

8. Applicants contend that the relatively small asset size of the Bond Portfolio hampers the ability to maintain optimal diversification of its investments. In contrast, increasing asset size will permit the U.S. Government Portfolio to purchase attractive portfolio securities. Consequently the U.S. Government Portfolio can be expected to achieve greater portfolio diversification and to react more readily to changes in market conditions. Applicants assert that ValueMaster Contractowners will benefit through the more effective management of a potentially larger asset base with more diversified portfolio securities, such as that available through the U.S. Government Portfolio.

9. Applicants submit that the ValueMaster Contracts reserve to the Companies the right to replace the shares of the Portfolios held by the Accounts with shares of another portfolio, such as the U.S. Government Portfolio, if: (a) shares of a Portfolio should no longer be available for investment by the Accounts; or (b) in the judgment of the Companies, further investment in a Portfolio should become inappropriate in view of the purpose of the ValueMaster Contracts. Any such substitution must be approved by the Commission and must comply with applicable rules and regulations. The Companies believe that further investment in shares of the Bond Portfolio is no longer appropriate in view of the purposes of the ValueMaster Contracts.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the proposed Substitution meets the standards set forth in Sections 26(b) and 17(b) of the 1940 Act.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-2782 Filed 2-4-97; 8:45 am]

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Sunshine Act; Meeting

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of February 3, 1997.

A closed meeting will be held on Wednesday, February 5, 1997, at 10:00 a.m.

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

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, February 5, 1997, at 10:00 a.m., will be:

Injunction and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

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

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: January 31, 1997.

Jonathan G. Katz,
Secretary.

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