

existing fuel failures from propagating. Therefore, the Petitioner concluded that it was possible that "significantly more radioactive material will be released to the reactor coolant system during a transient or accident than that experienced during steady state operation." In addition, the Petitioner also stated that, by operating with possible failed fuel cladding, RBS is violating its licensing basis for the radiation worker protection (as low as reasonably achievable [ALARA]) program as it is described in USAR Sections 12.1.1, "Policy Considerations," and 12.1.2.1, "General Design Considerations for ALARA Exposures."

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. By letter dated October 29, 1998, the Director denied Petitioner's request for enforcement action to require Entergy Operations, Inc., to immediately shut down RBS. In addition, the Director also extended an offer to the Petitioner for an informal public hearing at a date to be determined. A copy of the petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, D.C. 20555-0001.

Dated at Rockville, Maryland, This 29th day of October 1998.

For the Nuclear Regulatory Commission.

**Frank J. Miraglia,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 98-29786 Filed 11-5-98; 8:45 am]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23515; 812-10554]

### Ransom & Associates, Inc., et al.; Notice of Application

November 2, 1998.

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

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d), and 26(a)(2) of the Act and rules 19b-1 and 22c-1 under the Act, and under section 11(a) of the Act for an exemption from section 11(c) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain unit investment trusts ("UITs") to: (a) impose sales charges on a deferred basis and waive the deferred sales charges in certain cases; (b) conduct certain offers of exchange of units; (c) publicly offer units without requiring the sponsor of the UIT to take for its own account or place with others \$100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

**APPLICANTS:** Ransom & Associates, Inc. (the "Sponsor"), The Random Municipal Trust-Multi-State Series, Ransom Unit Investment Trusts (formerly, EVEREN Unit Investment Trusts), The Kansas Tax-Exempt Trust, Kemper Tax-Exempt Income Trust, Ohio Tax-Exempt Bond Trust, Kemper Government Securities Trust, Kemper Bond Enhanced Securities Trust, any future UIT sponsored by the Sponsor (collectively, the "Trusts"), and their respective series (each, a "Series").<sup>1</sup>

**FILING DATES:** The application was filed on March 7, 1997, and amended on July 30, 1997. Applicants have agreed to file an amendment to the application, the substance of which is incorporated in this notice, during the notice period.

**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 November 24, 1998, and should be accompanied by proof or 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 who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 250 N. Rock Road, Suite 150, Wichita, KS 67206.

**FOR FURTHER INFORMATION, CONTACT:** Lawrence W. Pisto, Senior Counsel, at (202) 942-0527, or Christine Y. Greenlees, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

<sup>1</sup> Any future Trust that relies on the relief will comply with the terms and conditions of the application.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202-942-8090).

### Applicants' Representations

1. Each Series will be a series of one of the Trusts, each a UIT registered under the Act. The Sponsor will be the sponsor of the Trusts. Each Series is created by a trust indenture among the Sponsor, an evaluator, and a banking institution or trust company serving as trustee (the "Trustee").

2. The Sponsor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interests in the portfolio ("Units"). The Units are offered to the public by the Sponsor, underwriters, and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities plus a front-end sales charge. The sales charge currently ranges from 1% to 4.9% of the public offering price. The maximum charge usually is subject to reduction in compliance with rule 22d-1 under the Act under certain stated circumstances disclosed in the prospectus, such as for volume purchases.

3. The Sponsor maintains a secondary market for Units, and continually offers to purchase these Units at prices based upon the bid side evaluation of the underlying securities. Investors may purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If the Sponsor discontinues maintaining such a market at any item for any Series, holders or Units ("Unitholders") of such a Series may redeem their Units through the Trustee.

### A. Deferred Sales Charge ("DSC") and Waiver of DSC Under Certain Circumstances

1. Applicants request an order to the extent necessary to permit them to impose a DSC, and waive the DSC under certain circumstances. Under applicants' proposal, a portion of the DSC would be collected "up front," *i.e.*, at the time an investor purchases Units, and the balance would be collected subsequently in equal installments ("Installment Payments") from Unitholders' distributions on the Units. The Trustee will withdraw the Installment Payment from the distribution income and pay the amount

directly to the Sponsor. If distribution income is insufficient to pay an Installment Payment or if a Series' portfolio consists of non-income producing securities, the Trustee will have the authority to sell portfolio securities in an amount necessary to pay the Installment Payment.

2. When a Unitholder redeems or sells Units, the balance of the Unit holder's Installment Payments on the redeemed Units will be deducted from the proceeds of the redemption or sale. When calculating the amount due, it will be assumed that Units on which the DSC has been paid in full are redeemed first. With respect to Units on which the DSC has not been fully paid, the DSC will be applied on the assumption that Units held for the longest time are redeemed or sold first. Under certain circumstances, the Sponsor may waive the DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d-1 under the Act.

3. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N-1A relating to deferred sales charges, modified as appropriate to reflect the differences between UITs and open-end investment companies. The prospectus will state the maximum amount of DSC per Unit. The prospectus also will disclose that portfolio securities may be sold to pay the DSC if distribution income is insufficient to pay the DSC, and that the securities will be sold *pro rata* or that a specific security will be designated for sale.

#### **B. Exchange Option and Rollover Option**

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series (the "Exchange Option"), and Unitholders of a Series that is terminating (each, a "Rollover Series") to exchange their Units for Units of a new Series of the same type (the "Rollover Option"). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or a DSC.

2. A Unitholder who purchased Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge imposed will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Sponsor and the

participating underwriters and brokers for their services in providing the DSC program.

3. Pursuant to the Exchange Option, an adjustment would be made if Units of any Series are exchanged within five months of their acquisition for Units of a Series with a higher sales charge (the "Five Months Adjustment"). An adjustment also would be made if Units on which a DSC is collected are exchanged for Units of a Series that imposes a front-end sales charge and the exchange occurs before the DSC collected at least equals the per Unit sales charge on the acquired Units (the "DSC Front-End Exchange Adjustment"). If an exchange involves either the Five Months Adjustment or the DSC Front-End Exchange Adjustment, the Unitholder would pay the greater of: (a) the reduced sales charge, or (b) an amount which, together with the sales charge already paid on the exchanged Units, equals the normal sales charge on the Units of a Series being acquired (the "Exchange Series") on the date of the exchange. With appropriate disclosures, the Sponsor may waive such payment. Further, the Sponsor would reserve the right to vary the sales charge normally applicable to a Series, vary the charge applicable to exchanges, and modify, suspend, or terminate the Exchange Option or Rollover Option as set forth in the conditions to the application.

#### **Applicants' Legal Analysis**

##### **A. DSC and Waiver of DSC**

1. Section 4(2) of the Act defines a "unit investment trust" as an investment company which "issues only redeemable securities." Section 2(a)(32) of the Act defines a "redeemable security" as a security which, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c-1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption, and repurchase be based on the security's current net asset value ("NAV"). To the extent that an Installment Payment may be deemed to cause Unitholders to receive less than NAV upon redemption, applicants request relief from section 2(a)(32) and rule 22c-1.

2. Section 22(d) of the Act and rule 22d-1 under the Act require an investment company and its principal underwriter and dealer to sell securities only at the current public offering price described in the investment company's

prospectus, with the exception of sales of redeemable securities at prices which reflect scheduled variations in the "sales load." Section 2(a)(35) defines the term "sales load" as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from sections 2(a)(35) and 22(d) to the extent that the DSC may be paid in installments rather than upon purchase.

3. Under section 6(c), the SEC may exempt classes of 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.

4. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d), rule 22d-1, and section 2(a)(35), taken together, are intended to prevent (i) riskless trading in investment company securities due to backward pricing, (ii) disruption of orderly distribution by dealers selling shares at a discount, and (iii) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants contend that the deduction of the Installment Payments is consistent with the policy of forward pricing. Applicants also contend that the amount, computation, and timing of the DSC will promote fair treatment of all Unitholders, while permitting the Trusts to offer Unitholders the advantage of having a large portion of their purchase amount invested immediately. Applicants further note that the DSC program will be disclosed in the prospectus of each Series and available on the same terms to all investors. Finally, applicants state that any waiver of the DSC will be disclosed in the prospectus of each Series and implemented in accordance with rule 22d-1.

5. Section 26(a)(2), in relevant part, prohibits a trustee or custodian of a UIT from collecting from the UIT as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Sponsor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2) to the extent necessary to permit the Trustee to collect DSC payments and disburse them to the Sponsor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load than as an "expense."

### *B. Exchange Option and Rollover Option*

Section 11(a) and (c) of the Act prohibit any offer of exchange by a registered UIT for the securities of any other investment company on any basis other than the relative NAV of the securities to be exchanged, unless the terms of the offer have been approved in advance by the SEC or meet the requirements of any rules adopted to regulate exchange offers. Applicants request an order under section 11(a) for an exemption from section 11(c) to permit the Exchange Option and the Rollover Option. Applicants state that the Five Months Adjustment and the DSC Front-End Exchange Adjustment in certain circumstances are appropriate in order to maintain the equitable treatment of various investors in each Series.

### *C. Net Worth Requirement*

1. Section 14(a) of the Act requires in substance that investment companies have \$100,000 of net worth prior to making a public offering. Applicants state that each Series would comply with this requirement because the Sponsor will deposit substantially more than \$100,000 of debt or equity securities or a combination thereof, depending on the objective of the particular Series. Applicants assert, however, that the SEC has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Sponsor's intention to sell all the Units of the Series.

2. Rule 14a-3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in "eligible trust securities," as defined in rule 14a-3. Applicants state that they may not rely on rule 14a-3 because certain future Series (collectively, the "Equity Series") will invest all or a portion of their assets in equity securities, which do not meet the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) from section 14(a) to the extent necessary to exempt the Series from the net worth requirement in section 14(a). Applicants state that they will comply in all respects with rule 14a-3, except that the Equity Series will not restrict their portfolio investments to eligible trust securities.

### *D. Capital Gains Distribution*

1. Section 19(b) of the Act provides that a registered investment company

may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more than once every twelve months. Rule 19b-1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b-1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b-1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code. Rule 19b-1(c), under certain circumstances, excepts a UIT investing in "eligible trust securities" (as defined in rule 14a-3) from the provisions of rule 19b-1. Because, as noted above, the Equity Series will not limit their investments to "eligible trust securities," they will not qualify for the exemption in paragraph (c) of rule 19b-1.

2. Applicants request an exemption under section 6(c) from section 19(b) and rule 19b-1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with Section 19(b) and rule 19b-1.

3. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sales of portfolio securities would be triggered by the need to meet Series expenses, DSC installments, or by requests to redeem Units, events over which the Sponsor and the Equity Series do not have control. Applicants further state that reports to Unitholders that will accompany each distribution pursuant to rule 19b-1 will disclose the sources of the distribution.

### **Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

#### *A. DSC and Waiver of DSC*

1. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N-1A relating to deferred sales charges, modified as appropriate to reflect the differences between UITs and open-end investment companies.

2. Any DSC imposed on Units issued by a Series will comply with the

requirements of rule 6c-10(a) (1) through (3) under the Act.

### *B. Exchange Option and Rollover Option*

1. Whenever the Exchange Option or Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or Rollover Option, or to delete a Series that has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Exchange Series or Rollover Series under section 22(e) of the Act and the rules and regulations promulgated under the Act, or (ii) an Exchange Series or Rollover Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series and any sales literature or advertising that mentions the existence of the Exchange Option or the Rollover Option will disclose that the Exchange Option and Rollover Option are subject to modification, termination or suspension, without notice except in certain limited cases.

### *C. Net Worth Requirement*

Applicants will comply in all respects with the requirements of rule 14a-3, except that the Equity Series will not restrict their portfolio investments to "eligible trust securities."

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-29784 Filed 11-5-98; 8:45 am]

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