

safeguarding of securities and funds in its custody or control or for which it is responsible in accordance with Section 17A(b)(3)(A) and (F) of the Act.⁶ PHILADEP has stated that the FASTRACS program has functioned effectively in this capacity since its initial approval on July 19, 1994; however, testing of the program is not complete. Therefore, the Commission believes that an extension of the FASTRACS pilot program through December 29, 1995, is appropriate because it will provide PHILADEP with the opportunity to continue testing the FASTRACS program and to report the results of its testing to the Commission.

III. Conclusion

The Commission finds that PHILADEP's proposal is consistent with the requirements of the Act and particularly with Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-PHILADEP-94-06) be, and hereby is, approved through December 29, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC-21041; International Series Release No. 807; 812-9340]

Bayerische Vereinsbank Aktiengesellschaft, et al.

May 4, 1995.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Bayerische Vereinsbank Aktiengesellschaft ("BV") and Vereinsbank Finance (Delaware) Inc. ("Issuer").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicants from subparagraphs (a)(1) and (a)(3) of rule 3a-5 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit Issuer, a wholly-owned BV subsidiary, to sell its commercial paper in the United States to raise funds for the business operations of BV without registering as an investment company.

FILING DATE: The application was filed on December 5, 1994, and amended on March 23, 1995.

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 30, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants: 335 Madison Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942-0573, or Robert A. Robertson, Branch Chief, at (202) 942-0546 (Division of Investment Management, Office of Investment Company Regulation).

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. BV is a bank organized under the laws of the Federal Republic of Germany ("Germany") with its headquarters in Munich. It is a publicly held corporation with limited liability (Aktiengesellschaft), the shares of which are quoted on all German stock exchanges. BV and its subsidiaries are active in the mortgage business, commercial banking, leasing, and funds management/financial advisory products. BV is subject to supervision by the Federal Banking Supervisory Office of Germany, an independent federal authority, and by the Deutsche Bundesbank, the German Central Bank. Applicants represent that regulation by German banking authorities is comparable in many respects to the supervision of United States commercial banks.

2. Issuer, a Delaware corporation, is a wholly-owned subsidiary of BV. Initially, Issuer proposes to issue and sell in the United States short-term negotiable promissory notes of the type exempt from the registration requirements of the Securities Act of

1933 by virtue of section 3(a)(3) thereof and generally referred to as commercial paper (the "Notes"). The Notes would be offered publicly, only to the types of sophisticated and largely institutional investors that ordinarily participate in the United States commercial paper market. The proceeds from the sale of the Notes would be used to finance the business activities of BV. Issuer may in the future issue and sell other debt securities.

3. Applicants require exemptive relief from subparagraphs (a)(1) and (a)(3) of rule 3a-5, since BV will not unconditionally guarantee the obligations of Issuer to pay the Notes, as required by the rule. BV will provide a functional equivalent of a guarantee. BV requires the proposed structure for tax reasons and because the German Federal Banking Law and the German Federal Supervisory Office could require BV to maintain additional funds if BV provided an unconditional guarantee or letter of credit.

4. Issuer would deposit the net proceeds from the sale of the Notes (the "Deposits") at BV's Cayman Islands branch (the "Branch") pursuant to a deposit agreement (the "Deposit Agreement") to be entered into by Issuer, the Branch, and BV. Substantially all of Issuer's assets would consist of a single evidence of indebtedness of the Branch issued to Issuer evidencing Issuer's deposits. The Branch unconditionally agrees to repay to Issuer each Deposit made by Issuer at the Branch, including accrued interest, on the maturity date of the Deposit. Noteholders would be assigned as security and granted a security interest in the Deposits and accrued interest corresponding to their Notes. If Issuer fails to pay a Note according to its terms, the Deposit Agreement entitles the Noteholder to receive payments by the Branch of the Deposit and accrued interest.

5. Under German law and pursuant to the Deposit Agreement, the repayment obligation of the Branch in respect of the Deposits is an obligation of BV. BV's obligations regarding its liabilities to Issuer will rank at least *pari passu* among themselves and with all other unsecured and unsubordinated indebtedness, including deposit liabilities, of BV and will be superior to rights of shareholders.

6. To assure that the proceeds from the sale of the Notes will be deposited with the Branch, Issuer and the Branch will enter into an agreement ("Issuing and Paying Agency Agreement") with a commercial bank pursuant to which the Branch would have an operating account with the commercial bank. The

⁶ 15 U.S.C. 78q-1(b)(3)(A) and (F) (1988).

⁷ 17 CFR 200.30-3(a)(12) (1994).

payments of the proceeds of the sale of the Notes to the Branch would be made to this account, and the payments by Issuer or the Branch to the Noteholders would be made from this account by appropriate debits or credits, respectively. The Issuing and Paying Agency Agreement states that the Branch will have exclusive control over the account, and the sole right of withdrawal of funds therefrom. At the moment the proceeds from the sale of the Notes are deposited in the Branch's account at a commercial bank, the Noteholder would have a right of action against BV under his or her security interest in the Deposit and, therefore, the Noteholder's security interest in the Deposit would attach.

7. BV, in connection with the offering of the Notes, would submit to the jurisdiction of any state or federal court in the Borough of Manhattan in the City of New York, and would appoint Issuer as agent to accept any process which may be served in any suit, action, or proceeding brought against BV based upon its obligations to Issuer. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process would be irrevocable until all amounts due and to become due with respect to outstanding Deposits and all outstanding obligations of BV to Issuer have been paid.

Applicants' Legal Analysis

1. Without exemptive relief, Issuer may be an investment company, as defined in section 3(a) of the Act. Rule 3a-5 states that a finance subsidiary will not be considered an investment company under section 3(a), provided the subsidiary meets certain requirements. Applicants believe that Issuer would meet the requirements of rule 3a-5, except that the Notes and any other debt securities and non-voting preferred stock which Issuer may issue in the future would not be guaranteed in a technical sense by BV, as required by subparagraphs (a)(1) and (a)(3) of the rule. Instead, BV would provide the functional equivalent of a guarantee. Applicants believe that the entitlement of the Noteholders to receive payment by the Branch of the Deposit corresponding to the Notes in case of failure of Issuer to pay the Notes upon maturity would be the substantial equivalent of a guarantee. Applicants represent that the business and fiscal considerations behind BV's desire to use Issuer as a financing vehicle to sell the Notes in the United States in no way impinge upon the public policy concerns, such as investor protection, that underlie the Act.

Applicants' Conditions

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

1. BV will state expressly in the Deposit Agreement that the obligations of the Branch to the Issuer and the Noteholders are BV's own obligations.

2. If the Issuer fails to pay a Note in accordance with its terms, the Deposit Agreement will entitle the Noteholder to receive payment from the Branch. Noteholders will have a direct cause of action against BV in the event of any default in payment of the Notes.

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-21039; File No. 812-9288]

Companion Life Insurance Company, et al.

May 3, 1995.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Companion Life Insurance Company ("Companion Life"), Companion Life Separate Account C (the "Separate Account") and Mutual of Omaha Investor Services, Inc. ("Mutual of Omaha").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: An order is sought exempting Applicants and principal underwriters of certain flexible payment deferred variable annuity contracts (the "Policies") to the extent necessary to permit the payment to Companion Life of a mortality and expense risk charge from the assets of the Separate Account under the Policies.

FILING DATE: The application was filed on October 17, 1994 and amended and restated on April 4, 1995.

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 30, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons 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, Companion Life Insurance Company, 401 Theodore Fremd Avenue, Rye, New York 10580-1493.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Wendy Friedlander, Deputy Chief, at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Companion life is a stock life insurance company, incorporated under the laws of the State of New York on June 3, 1949, and engaged in the sale of life insurance and annuity policies in New York State. It is also licensed in New Jersey and Connecticut but does not currently do business in these states. Companion Life, a wholly-owned subsidiary of United of Omaha Life Insurance Company, is the depositor of the Separate Account.

2. The Separate Account was established by Companion Life as a separate investment account, on February 18, 1994, under the laws of the State of New York to serve as the funding medium for the Policies. The Separate Account currently has nine subaccounts (the "Subaccounts") and is registered under the Act as a unit investment trust. Each Subaccount invests in a corresponding portfolio of an underlying management investment company ("Fund"). Each Fund is registered under the Act as an open-end, management investment company and its shares are registered under the Securities Act of 1933.

3. Mutual of Omaha serves as distributor and principal underwriter for the Policies. It is registered with the SEC as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. ("NASD"). Broker-dealers other than Mutual of Omaha may also serve as distributors and principal underwriters of the Policies, to the extent the Policies are sold through alternate distribution channels. Any