

ranging up to 3.5% on annuity policies issued by insurance companies. In addition, other government units within a state may levy such taxes.

15. Companion Life imposes a \$10 transfer fee to any transfer in excess of 12 per Policy year. Companion Life deducts the transfer fee from the amount transferred. No charge will be imposed on transfers from the fixed account and transfers made in connection with the dollar cost averaging program do not count toward the 12 free transfers per year limit. Applicants represent that this charge will be deducted in reliance on Rule 26a-1 and represents reimbursement only for administrative costs expected to be incurred in processing transfers over the life of the Policies. Companion Life does not anticipate any profit from this charge.

Applicant's Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the Act to the extent that it is necessary or appropriate in the public interest and consist with the protection of investors and the purposes fairly intended by the Policy and provisions of the Act. Sections 26(a)(2)(C) and 27(c)(2) of the Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicants request exemptions from Sections 25(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a charge of 1.25% from the assets of the Separate Account to compensate Companion Life for the assumption of mortality and expense risks. Applicants assert that the requested exemptions are necessary and 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.

3. Applicants request that the relief sought herein also apply to a class consisting of broker-dealers who may, in the future, act as principal underwriters of the Policies. Applicants believe that the terms of the relief requested with respect to future underwriters issuing the Policies are consistent with the standards enumerated in Section 6(c) of

the Act. The requested relief would promote competitiveness in the variable annuity market by eliminating the need for Companion Life to file redundant exemptive applications for each new principal underwriter that distributes the Policies it issues, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair Companion Life's ability to effectively take advantage of business opportunities as they arise and investors would not receive any benefit or additional protection thereby. Indeed, they might be disadvantaged as a result of Companion Life's increased overhead expenses. Thus, Applicants believe that the requested exemption is 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 submit that Companion Life is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of 1.25% on an annual basis under the Policies made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. Companion Life represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, guaranteed annuity rates. Companion Life will maintain at its administrative office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey.

5. Applicants acknowledge that the proceeds of the withdrawal charges may be insufficient to cover all costs relating to the distribution of the Policies. Applicants also acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. Companion Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Policy owners. The basis for such conclusion is set forth in a memorandum which will be maintained

by Companion Life at its administrative offices and will be available to the Commission. Companion Life also represents that the Separate Account will only invest in management investment companies which undertake, in the event any such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company as defined in the Act, formulate and approve any such plan under Rule 12b-1.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the Policy and provisions of the Act.

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

Margaret M. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-M

[Rel. No. IC-21042; 812-9564]

Janus Investment Fund, et al.; Notice of Application

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: Janus Investment Fund and Janus Aspen Series (collectively, the "Trusts"), all existing and future series of the foregoing investment companies, Janus Capital Corporation ("Janus Capital"), and any other registered investment companies that now or in the future are advised by Janus Capital or an entity controlling, controlled by, or under common control with Janus Capital.¹

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 12(d)(1)(A)(ii), under sections 6(c) and 17(b) for an exemption from section 17(a), and under rule 17d-1 to permit certain transactions in accordance with section 17(d) and rule 17d-1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit certain

¹ All existing investment companies that presently intend to rely on the requested order are named as applicants.

money market funds to sell their shares to affiliated investment companies and the money market funds subsequently to redeem such shares.

FILING DATES: The application was filed on April 5, 1995 and amended on April 27, 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 applicant 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 the applicant, 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. Applicant, Janus Capital Corporation, 100 Fillmore Street, Suite 300, Denver, Colorado 80206-4923.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942-0562, or C. David Messman, Branch Chief, at (202) 942-0564 (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 from the SEC's Public Reference Branch.

Applicant's Representations

1. The Trusts are open-end management investment companies that currently offer twenty-four series (each a "Fund"). Four of the Funds are money market funds subject to the requirements of rule 2a-7 under the Act (together with any future money market funds, the "Money Market Funds"). The other twenty Funds are non-money market funds (together with any future non-money market funds, the "Non-Money Market Funds").

2. Janus Capital serves as investment adviser and administrator for each of the Funds. Janus Distributors, Inc. serves as distributor for Janus Investment Fund. Shares of Janus Aspen Series are self-distributed. United Missouri Bank, N.A. serves as custodian for each Money Market Fund. Investors Fiduciary Trust Company serves as custodian and transfer agent for each Non-Money Market Fund. Janus Service Corporation

is the transfer agent for each Money Market Fund.

3. The Money Market Funds seek current income, liquidity, and capital preservation by investing exclusively in short-term money market instruments, such as United States government securities, bank obligations, commercial paper, municipal obligations, or repurchase agreements secured by government securities. These short-term debt securities are valued at their amortized cost pursuant to rule 2a-7.

4. The Non-Money Market Funds invest in a variety of debt and/or equity securities in accordance with their respective investment objectives and policies. Each of the Funds has, or may be expected to have, uninvested cash in an account with the custodian. This cash either may be invested directly in individual short-term money market instruments or may not be invested in any portfolio securities.

5. Applicants seek an order that would permit (a) each of the Funds to utilize cash reserves that have not been invested in portfolio securities to purchase shares of one or more of the Money Market Funds (each such Fund, including Money Market Funds, purchasing shares of a Money Market Fund, is an "Investing Fund") and (b) each Money Market Fund to sell shares to, and redeem such shares from, an Investing Fund. By investing cash balances in the Money Market Funds as proposed, applicants believe that the Investing Funds will be able to combine their cash balances and thereby reduce their transaction costs, create more liquidity, enjoy greater returns, and further diversify their holdings. The policies of the Funds permit the Funds to purchase money market instruments, including shares of a money market fund.

6. The shareholders of the Investing Funds would not be subject to the imposition of double management fees. Janus Capital and its respective affiliated persons will remit to the respective Investing Funds, or waive, an amount equal to the investment advisory fees Janus Capital and its affiliated persons earn as a result of the Investing Funds' investments in the Money Market Funds to the extent the fees are based upon the Investing Funds' assets invested in shares of the Money Market Funds (the "Reduction Amount"). Further, no sales charge, contingent deferred sales charge, 12b-1 fee, or other underwriting or distribution fee will be charged by the Money Market Funds with respect to the purchase or redemption of their shares. If a Money Market Fund offers more than one class of shares, each Investing

Fund will invest only in the class with the lowest expense ratio at the time of the investment.

7. Several of the Funds have voluntary expense cap arrangements with Janus Capital for the purpose of keeping each Fund's total expenses below a certain predetermined percentage amount (an "Expense Waiver"). To the extent actual expenses of the Funds exceed these caps, Janus Capital waives or reimburses a Fund in the amount of the excess. Any applicable Expense Waiver will not limit the advisory and administrative fee waiver or remittance discussed above.

8. Applicants also request relief that would permit the Funds to invest uninvested cash in a Money Market Fund in excess of the percentage limitations set out in section 12(d)(1)(A)(ii) of the Act. Section 12(d)(1)(A)(ii) prohibits a registered investment company from acquiring the securities of another investment company if, immediately thereafter, the acquiring company would have more than 5% of its total assets invested in the securities of the selling company. Applicants propose that each Fund be permitted to invest in shares of a Money Market Fund so long as each Fund's aggregate investment in such Money Market Fund does not exceed the greater of 5% of such Fund's total net assets or \$2.5 million. Applicants will comply with all other provisions of section 12(d)(1).

Applicants' Legal Analysis

1. Sections 17(a) (1) and (2) make it unlawful for any affiliated person of a registered investment company, or an affiliated person of such affiliated person, acting as principal, to sell or purchase any security to or from such investment company. Because each fund may be deemed to be under common control with the other Funds, it may be an "affiliated person," as defined in section 2(a)(3), of the other Funds. Accordingly, the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of such shares of the Money Market Funds from the Investing Funds, would be prohibited under section 17(a).

2. Section 17(b) authorizes the SEC to exempt a single transaction from section 17(a) if 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, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with

the general purposes of the Act. Under section 6(c), the SEC may exempt a series of transactions from any provision of the Act or any rule or regulation thereunder 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. Thus, applicants request relief under sections 6(c) and 17(b) because they wish to engage in a series of transactions rather than a single transaction.

3. The Investing Funds will retain their ability to invest their cash balances directly into money market instruments if they believe they can obtain a higher return. Each of the Money Market Funds has the right to discontinue selling shares to any of the Investing Funds if its board of trustees determines that such sales would adversely affect the portfolio management and operations of such Money Market Fund. Therefore, applicants believe that the proposal satisfies the standards for relief.

4. Section 17(d) and rule 17d-1 prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Each Investing Fund, Janus Capital, and each of the Money Market Funds could be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d)(1) and rule 17d-1.

5. Under rule 17d-1, the SEC may permit a proposed joint transaction if participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act, and not on a basis different from or less advantageous than that of the other participants. Applicants believe that the proposal satisfies these standards.

6. Section 12(d)(1), as noted above, sets certain limits on an investment company's ability to invest in the shares of another company. The perceived abuses section 12(d)(1) sought to address include undue influence by an acquiring fund over the management of an acquired fund, layering of fees, and complex structures. Applicants believe that none of these concerns are presented by the proposed transactions and that the proposed transactions meet the section 6(c) standards for relief.

Applicants' Conditions

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

1. Shares of the Money Market Funds sold to and redeemed from the Investing

Funds will not be subject to a sales load, redemption fee, or distribution fee under a plan adopted in accordance with rule 12b-1.

2. Applicants will cause Janus Capital and its affiliated persons to remit to the respective Investing Fund, or waive, an amount equal to the Reduction Amount. Any of these fees remitted or waived will not be subject to recoupment by Janus Capital or its affiliated persons at a later date.

3. For the purpose of determining any amount to be waived and/or expenses to be borne to comply with any Expense Waiver, the adjusted fees for an Investing Fund (gross fees minus Expense Waiver) will be calculated without reference to the amounts waived or remitted pursuant to condition 2. Adjusted fees then will be reduced by the amount waived pursuant to condition 2. If the amount waived pursuant to condition 2 exceeds adjusted fees, Janus Capital also will reimburse the Investing Fund in an amount equal to such excess.

4. Each of the Investing Funds will be permitted to invest uninvested cash in, and hold shares of, a Money Market Fund only to the extent that the Investing Fund's aggregate investment in such Money Market Fund does not exceed the greater of 5% of the Investing Fund's total net assets or \$2.5 million.

5. Each Investing Fund will vote its shares of each Money Market Fund in the same proportion as the votes of all other shareholders of such Money Market Funds entitled to vote on the matter.

6. As shareholders of a Money Market Fund, the Investing Funds will receive dividends and bear their proportionate share of expenses on the same basis as other shareholders of such Money Market Funds. A separate account will be established in the shareholder records of each of the Money Market Funds for each of the Investing Funds.

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

Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC-21040; File No. 812-9338]

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

May 4, 1995

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

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

APPLICANTS: The Mutual Life Insurance Company of New York ("Mutual of New York"), MONY Life Insurance Company of America ("MONY", together with Mutual of New York, the "Companies"), MONY Variable Account L ("Account L"), MONY America Variable Account L ("MONY Account L"), any other separate account established by the Companies in the future to support flexible premium, single premium, or scheduled premium variable life insurance policies (the "Other Accounts," collectively, with Account L and MONY Account L, the "Accounts") and MONY Securities Corp.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(c)(2) of the 1940 Act and Rules 6e-2(c)(4)(v), 6e-3(T)(c)(4)(v), 6e-2(a)(2), and 6e-2(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to deduct from premiums received under certain variable life insurance policies (the "Contracts") issued by the Accounts and the Companies a charge that is reasonable in relation to the Companies' increased federal income tax burden resulting from the Companies' receipt of such premiums in connection with the Contracts. Applicants also seek an order to permit any of the Accounts to derive its assets from both flexible and scheduled premium variable life insurance policies and nevertheless to qualify as a variable life insurance separate account, with respect to single premium or scheduled premium life insurance policies, for the purposes of Rule 6e-2.

FILING DATE: The application was filed on November 23, 1994.

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, personally or by mail. Hearing requests must be received by the Commission 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 interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.