

inclusion in the Exchange Interpretation Handbook.

## II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>3</sup> In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices in that it addresses the practices of Exchange members and member organizations who make telemarketing calls. Proposed Rule 440A and the interpretation concerning the meaning and administration of proposed Rule 440A, require a specific practice, the maintenance of a "do-not-call" list. The purpose of maintaining a "do-not-call" list is to prevent such manipulative acts by members and member organizations, such as persistent calls to investors who have expressed their desire not to receive telephone solicitations.

The Commission also believes the proposal is consistent with the Section 6(b)(5) requirement to protect investors and the public interest. Proposed Rule 440A and the interpretation thereto, protects investors and the public interest by enforcing members' and member organizations' compliance with investors' desire not to receive such calls. In addition, the proposed interpretation reminds members and member organizations that they are subject to the requirements of the rules of the FCC and the SEC relating to telemarketing practices and the rights of telephone consumers. For example, the FCC requires persons or entities making telephone solicitations to maintain a do-not-call list for the purpose of any future telephone solicitations.<sup>4</sup>

## III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> that the proposed rule change (SR-NYSE-95-11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Rel. No. IC-21119; File No. 812-9456]

## IL Annuity and Insurance Company, et al.

June 7, 1995.

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

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

**APPLICANTS:** IL Annuity and Insurance Company ("IL Annuity"), IL Annuity and Insurance Company Separate Account 1 ("IL Annuity Account"), and IL Securities, Inc.

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the IL Annuity Account and other separate accounts established by IL Annuity in the future ("Other Separate Accounts") in connection with the issuance and sale of certain flexible premium deferred variable annuity contracts ("Contracts") and any contracts that are similar in all material respects to the Contracts ("Other Contracts"). Applicants also request that the exemptive relief extend to certain other broker-dealers which may serve in the future as a principal underwriter of the Contracts or Other Contracts ("Future Underwriters").

**FILING DATE:** The application was filed on January 31, 1995, and amended on May 22, 1995.

**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 Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 3, 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 requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Margaret H. McKinney, Esq., Associate General Counsel and Secretary, Indianapolis Life Insurance Company, 2960 North Meridian Street, Indianapolis, IN 46208.

**FOR FURTHER INFORMATION CONTACT:** Mark C. Amorosi, Attorney, or Wendy Finck 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 Commission's Public Reference Branch.

## Applicants' Representations

1. IL Annuity, formerly known as Sentry Investors Life Insurance Company, is a stock life insurance company organized under the laws of the Commonwealth of Massachusetts in 1966. IL Annuity is a wholly-owned subsidiary of the Indianapolis Life Group of Companies, Inc., which is a wholly-owned subsidiary of the Indianapolis Life Insurance Company ("ILICO"). ILICO is a mutual life insurance company chartered under Indiana law. IL Annuity is authorized to conduct life insurance and annuity business in 40 states and the District of Columbia. IL Annuity is the depositor and sponsor of the IL Annuity Account.

2. The IL Annuity Account was established by IL Annuity as a separate account under the laws of Indiana on November 1, 1994 as a funding medium for variable annuity contracts. The IL Annuity Account meets the definition of a "separate account" under the federal securities laws and is registered under the 1940 Act as a unit investment trust. The IL Annuity Account is divided into fifteen subaccounts (the "Variable Accounts") each of which will invest solely in the shares of a designated series (each a "Portfolio") of The Alger American Fund, the Fidelity Variable Insurance Products Fund, the Fidelity Variable Insurance Products Fund II, the Quest for Value Accumulation Trust, the T. Rowe Price International Series, Inc., the T. Rowe Price Fixed Income Series, Inc., and the Van Eck Investment Trust (the "Funds"). Each of the Funds is registered as a diversified, open-end management investment company under the 1940 Act.

3. IL Securities, Inc. ("ILS"), a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., will serve as the distributor and principal underwriter for the Contracts. ILS is a wholly-owned subsidiary of the Indianapolis Life Group of Companies, Inc. Any Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and will be a member of the National Association of Securities Dealers, Inc.

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 47 CFR 64.1200.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

4. The Contracts are flexible premium deferred variable annuity contracts which may be sold on a non-tax qualified basis ("Non-Qualified Contracts") or offered in connection with retirement plans which qualify for favorable federal income tax treatment ("Qualified Contracts"). The Contracts provide for, among other things: (a) Minimum initial and subsequent premium payments of \$1,000; (b) several annuity payment options beginning on the annuity commencement date; and (c) if the annuitant dies during the accumulation phase, the payment of a death benefit equal to the greater of (1) the aggregate premium payments made under the Contract, less partial withdrawals, as of the date IL Annuity receives due proof of death and payment instructions, or (2) the Contract value as of the date IL Annuity receives due proof of death and payment instructions; and less applicable premium taxes not previously deducted (and less any outstanding loan amount on the date the death benefit is paid, if the Contract is a Qualified Contract).

The Contract also provides for a maturity benefit payment if the value of a particular Variable Account is less than the sum of the premium payments which were initially allocated to that Variable Account and which have remained continuously in that Variable Account for a minimum of ten years. The maturity benefit payment is equal to (a) the sum of the premium payments which have remained in a Variable Account from the time of initial payment until the maturity benefit date, provided ten years have elapsed from the time of payment until the maturity benefit date; minus (b) the value of the Variable Account on the maturity benefit date.

The Contract also provides transfer privileges, a dollar cost averaging program, an interest sweep program and an automatic account balancing program.

5. Various fees and charges are deducted under the Contracts. A quarterly contract maintenance fee of \$7.50 will be deducted from Contract value at the end of each three month period measured from the date of issue until the annuity commencement date and upon a full withdrawal to reimburse IL Annuity for certain administrative expenses. A daily asset-based administration charge equal to an effective annual rate of 0.15% of the average daily separate account value will be deducted to reimburse IL Annuity for certain administrative services provided to Contract owners. These administrative fees are

guaranteed not to increase for the duration of the Contract. IL Annuity permits twelve free transfers among the Variable Accounts per Contract year; however, a \$25 charge will be assessed on the thirteenth and each subsequent transfer within the Contract year. IL Annuity represents that these charges will be deducted in reliance upon Rule 26a-1 under the 1940 Act and that each charge represents reimbursement only for administrative costs expected to be incurred.

6. IL Annuity will deduct premium taxes paid on behalf of a particular Contract either (a) from premium payments as received or (b) from the Contract proceeds upon (i) a partial or full surrender, (ii) application of the proceeds to a payment option or (iii) upon payment of a death benefit. Premium taxes currently range up to 3.5%.

7. No sales charge is deducted from premium payments. However, certain full or partial surrenders will be subject to a contingent deferred sales charge ("Withdrawal Charge") of up to 8% during the first nine Contract years. Amounts subject to the Withdrawal Charge will be deemed to be first from premium payments, then from earnings. In any Contract year, a Contract owner may withdraw 10% of the Contract value as of the beginning of the Contract year without incurring a Withdrawal Charge. IL Annuity may also waive the Withdrawal Charge under other circumstances permitted under the 1940 Act.

The Withdrawal Charge covers expenses relating to the distribution and sale of the Contracts, including commissions to registered representatives, preparation of sales literature and other promotional expenses. IL Annuity does not anticipate that the Withdrawal Charge will generate sufficient revenues to pay the cost of distributing the Contracts. To the extent that the Withdrawal Charge is insufficient to cover all sales and distribution expenses, the deficiency will be met from IL Annuity's general account, which may include profits derived from the mortality and expense risk charge.

8. Shares of the Portfolios are sold to the Variable Accounts at net asset value. Each Portfolio pays its investment adviser a fee for managing its investments and business affairs. Each Portfolio is responsible for all of its operating expenses.

9. A daily charge equal to an effective annual rate of 1.25% of the average daily net assets in the IL Annuity Account will be deducted to compensate IL Annuity for bearing

certain mortality and expense risks under the Contracts. Of that amount, approximately 0.90% is for mortality risks and approximately 0.35% is for the expense risk. The mortality risks arise from IL Annuity's contractual obligations (1) to make annuity payments (determined in accordance with the annuity tables and other provisions provided in the Contract) regardless of how long any individual annuitant or all annuitants may live and (2) to provide a death benefit if the annuitant dies prior to annuitization. Applicants represent that the mortality risk charge may not be increased under the Contract. The expense risk assumed by IL Annuity is the risk that IL Annuity's actual administrative costs will exceed the amount recovered through the administrative and policy maintenance charges. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts and the IL Annuity Account, IL Annuity will bear the loss.

#### Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it 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 1940 Act. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 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 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the 1.25% charge from the assets of the IL Annuity Account to compensate IL Annuity for the assumption of mortality and expense risks. Applicants further request that such exemptive relief extend to any Other Contracts which may be issued in the future by the IL Annuity Account or any Other Separate Account established by IL Annuity. 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 1940 Act.

3. IL Annuity represents that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon IL Annuity's analysis of publicly available information about comparable industry products, taking into consideration such factors as annuity purchase rate guarantees, death benefit guarantees, other contract charges, the frequency of charges, the administrative services performed by IL Annuity with respect to the Contracts, the means of promotion, the market for the Contracts, investment options under the Contracts, purchase payment, transfer, dollar cost averaging and automatic account balancing features, and the tax status of the Contracts. IL Annuity represents that it will maintain at its home office, a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative review.

4. Prior to issuing any Other Contracts, Applicants will determine that the mortality and expense risk charge under any Other Contracts is within the range of industry practice for comparable contracts. IL Annuity represents that the basis for this conclusion will be set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.<sup>1</sup>

5. IL Annuity acknowledges that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the Withdrawal Charge. IL Annuity represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the IL Annuity Account and Contract owners. IL Annuity represents that the basis for that conclusion is set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.

6. Prior to issuing any Other Contracts, Applicants will determine that there is a reasonable likelihood that the proposed distribution financing arrangement for any Other Contracts will benefit the IL Annuity Account or any Other Separate Account and Contract owners. IL Annuity represents that the basis for this conclusion will be

set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.<sup>2</sup>

7. Applicants assert that the terms of the future relief requested with respect to Other Separate Accounts, Other Contracts and Future Underwriters are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants submit that, if IL Annuity were to repeatedly seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit. Applicants assert that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the filing of redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants represent that both the delay and the expense of repeatedly seeking exemptive relief would impair IL Annuity's ability to effectively take advantage of business opportunities as they arise.

8. IL Annuity also represents that the IL Annuity Account or any Other Separate Accounts will invest only in management investment companies which undertake, in the event they should adopt a plan under Rule 12b-1 of the 1940 Act to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons" of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

#### 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 the purposes fairly intended by the policy and provisions of the 1940 Act.

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-21124; 813-138]

#### Merrill Lynch KECALP L.P. 1994 and KECALP Inc.; Notice of Application

June 8, 1995.

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

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

**APPLICANTS:** Merrill Lynch KECALP L.P. 1994 (the "1994 Partnership") and KECALP Inc. (the "General Partner").

**RELEVANT ACT SECTIONS:** Order requested under sections 6(b) and 17(b) from section 17(a).

**SUMMARY OF APPLICATION:** Applicants request an order which would let the General Partner sell to future partnerships certain investments that were purchased and held by the General Partner on behalf of a future partnership prior to the closing of such partnership's initial offering. The order also would let the General Partner sell to the 1994 Partnership four investments that the General Partner has purchased and is holding as nominee for the 1994 Partnership.

**FILING DATES:** The application was filed on November 10, 1994, and was amended on February 22, 1995, May 31, 1995, and June 7, 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 July 3, 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 request, 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 Fifth Street N.W., Washington, D.C. 20549. Applicants, South Tower, World Financial Center, 225 Liberty Street, New York, New York 10080-6123.

**FOR FURTHER INFORMATION CONTACT:** Sarah A. Wagman, Staff Attorney, at (202) 942-0654, 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

<sup>1</sup> Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

<sup>2</sup> Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.