

7. As of the date of the application, applicant had no assets, debts, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant will terminate its existence as a business trust under Massachusetts law.

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

Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC-21153; No. 812-9498]

United of Omaha Life Insurance Company, et al.

June 20, 1995.

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

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

APPLICANTS: United of Omaha Life Insurance Company ("United of Omaha"), United of Omaha Separate Account C ("Separate Account") and Mutual of Omaha Investors Services, Inc. ("Services").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 2(a)(32), 22(c), 26(a)(2)(C), 27(c)(1), and 27(c)(2) of the 1940 Act and Rule 22c-1 thereunder.

SUMMARY OF APPLICATION. Applicants seek an order to permit the deduction of a mortality and expense risk charge and an enhanced death benefit charge from the assets of the Separate Account or any other separate account ("Other Accounts") established by United of Omaha to support certain flexible premium individual deferred variable annuity contracts ("Contracts") as well as other variable annuity contracts that are substantially similar in all material respects to the Contracts ("Future Contracts"). In addition, Applicants propose that the order extend to any broker-dealer other than Services, that may in the future serve as principal underwriter for the Contracts or Future Contracts, the same exemptions granted to Services ("Future Broker-Dealers"). Any such broker-dealer will register under the Securities Exchange Act of 1934 ("1934 Act") as a broker-dealer and will be a member of the National

Association of Securities Dealers, Inc. ("NASD").

FILING DATE: The application was filed on February 27, 1995, and was amended and restated on June 12, 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 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 14, 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 Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, Thomas J. McCusker, Esq., Law Division—3rd Floor, United of Omaha Life Insurance Company, Mutual of Omaha Plaza, Omaha, Nebraska 68175-1008.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Attorney, or Wendy Friedlander, Deputy Chief, both 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.

Applicants' Representatives

1. United of Omaha, a stock life insurance company, is organized in Nebraska and licensed to do business in the District of Columbia, all states except New York, and several foreign countries. United of Omaha is a wholly-owned subsidiary of Mutual of Omaha Insurance Company.

2. The Separate Account is a separate account established by United of Omaha to fund the Contracts. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act, and the Contracts are registered as securities under the Securities Act of 1933.

3. United of Omaha will establish for each investment option offered under the Contract a Separate Account subaccount ("Subaccount"), which will invest solely in a specific corresponding portfolio of certain designated investment companies ("Funds"). The Funds will be registered under the 1940 Act as open-end management

investment companies. Each Fund series will have separate investment objectives and policies.

4. Services will serve as the distributor and principal underwriter of the Contracts, and also may serve in these capacities for the Future Contracts. Services, an affiliate of United of Omaha, is registered under the 1934 Act as a broker-dealer and a member of the NASD.

5. In addition, broker-dealers other than Services also may serve as distributors and principal underwriters of certain of the Contracts as well as the Future Contracts. Future broker-dealers will be registered under the 1934 Act as broker-dealers and will be members of the NASD.

6. The Contracts are individual flexible premium variable deferred annuity contracts. They may be purchased on a non-tax qualified basis ("Non-Qualified Contracts") or they may be purchased and used in connection with retirement plans that qualify for favorable federal income tax treatment ("Qualified Contracts"). Both the Non-Qualified Contracts and the Qualified Contracts may be purchased with an initial premium of \$5,000, except under the electronic fund transfer program where the minimum initial purchase payments is \$2,000.¹ The minimum subsequent premium for both the Unqualified and Qualified Contracts is \$500 (or \$100 if made in connection with the electronic fund transfer program). Net purchase payments may be allocated to one or more of the Separate Account Subaccounts that have been established to support the Contracts. The Contracts also provide for the allocation of net purchase payments to the general account of United of Omaha, where such purchase payments are credited with a predetermined fixed rate of interest.

7. The Contracts provide for a series of annuity payments beginning on the annuity date. The Contract owner may select from several payout options which provide periodic annuity payments on a fixed basis.

8. The Contracts provide for a death benefit if the annuitant dies during the accumulation period. Any applicable premium taxes not previously deducted will be deducted from the death benefit payable. The standard death benefit is the greater of: (1) The accumulation value (without deduction of the CDSC, as defined below) on the later of the date on which due proof of death or an election of payout option is received by

¹ United of Omaha reserves the right to increase or decrease this amount.

United of Omaha's service office less any charge for applicable premium taxes; or (2) the sum of all net purchase payments, less any partial withdrawals. If the Contract owner elected the enhanced death benefit and dies before age 81, United of Omaha will provide an enhanced death benefit that will equal the greater of: (1) The accumulation value as of the end of the valuation period during which due proof of death and an election of a payout option are received by United of Omaha's service center; (2) the greatest anniversary value,² plus any subsequent net purchase payments and less any subsequent partial withdrawals; and (3) the sum of all net purchase payments less any partial withdrawals, accumulated at a 4.5% annual rate of interest, up to a maximum of two times each purchase payment. If the Contract owner elected the enhanced death benefit and dies after attaining age 81, the enhanced death benefit under the Contract will equal the greatest of: (1) The accumulation value as of the end of the valuation period during which due proof of death and an election of a payout option are received by United of Omaha's service center; (2) the greatest anniversary value up to the last Contract anniversary before the Contract owner attains age 81, plus any subsequent purchase payments and less any subsequent partial withdrawals; and (3) the sum of all net purchase payments paid prior to the last Contract anniversary before the Contract owner attained age 81, less any partial withdrawals, accumulated at a 4.5% annual rate of interest, up to a maximum of two times each purchase payment.

9. Certain charges and fees are assessed under the Contracts. There is no transfer fee charged for transfers from the fixed account or for the first 12 transactions from Subaccounts of the Separate Account in each Contract year. Subsequent transfers within a Contract year, however, will be assessed a fee of \$10 per transfer.

10. United of Omaha will deduct an administration charge from each Subaccount of the Separate Account. The charge is equal, on an annual basis, to .20% of the net asset value of each Subaccount.

11. An annual policy fee of \$30 will be charged against each Contract. This charge will be deducted pro rata from each Subaccount in which the Contract owner is invested at the end of each

Contract year prior to the annuity starting date (and upon a complete surrender) to compensate United of Omaha for the administrative services provided to Contract owners. Currently, this fee is waived if the accumulation value exceeds \$50,000.

12. Applicants represent that the transfer fee, administration charge, and the annual policy fee will not increase regardless of the actual cost incurred. In addition, Applicants represent that these charges are at cost with no anticipation of profit.

13. A contingent deferred sales charge ("CDSC") may be imposed on certain withdrawals. The amount of the CDSC decreases annually from 7% to 0% over 8 Contract years. For the purposes of determining the CDSC, withdrawals will be allocated first to premiums on a first-in, first-out basis so that all withdrawals are allocated to premiums to which the lowest (if any) CDSC applies, then to earnings. In addition, there is a free withdrawal amount equal to up to 15% of accumulation value each Contract year.³ Applicants state that the CDSC will not increase.

14. United of Omaha proposes to deduct a daily mortality and expense risk charge. United of Omaha represents that this charge is equal to an effective annual rate of 1.00% of the net asset value of the Separate Account, and that it will not increase. Of this amount, approximately .75% is for mortality risks and .25% is for expense risks.

15. United of Omaha assumes the mortality risk that the life expectancy of the annuitant will be greater than that assumed in the guaranteed annuity purchase rates, thus requiring United of Omaha to pay out more in annuity income than it had planned. Additional mortality risks assumed by United of Omaha are that it will waive the CDSC in the event of the death of the owner and United of Omaha's contractual obligation to provide a standard and an enhanced death benefit prior to the annuity date. Thus, United of Omaha assumes the risk that it may not be able to cover its distribution expenses and that the owner may die at a time when the amount of the death benefit payable exceeds the then net surrender value of the Contracts. The expense risk assumed by United of Omaha is that the contract administration charge will be insufficient to cover the cost of administering the Contracts.

16. In the event the mortality and expense risk charges are more than sufficient to cover United of Omaha's costs and expenses, any excess will be

a profit to United of Omaha. The cost of distributing the Contracts will be met from funds derived from the CDSC and from United of Omaha's general account, which may include amounts derived from the mortality and expense risk charge.

17. There will be a charge made each year for expenses related to the enhanced death benefit. United of Omaha deducts this charge through the cancellation of accumulation units at each Contract anniversary and at surrender to compensate it for the increased risks associated with providing the enhanced death benefit. The charge at full surrender will be a pro-rata portion of the annual charge. United of Omaha guarantees that this charge will never exceed an annual rate of .35% of the average death benefit amount.⁴

18. Should the owner live in a jurisdiction that levies a premium tax, United of Omaha will pay the taxes when due. United of Omaha represents that state premium taxes may range up to 3.5% of purchase payments and are subject to change. United of Omaha reserves the right to deduct the amount of the tax either from the premiums as they are received, upon payment in connection with the surrender of the Contract, upon death of any owner, or upon application of proceeds to a payout option.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 to the extent that the 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 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940, 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.

²The anniversary value equals the accumulation value on the Contract anniversary and subsequent purchase payments less subsequent partial withdrawals and premium tax not yet deducted.

³United of Omaha may waive the CDSC under certain circumstances.

⁴The average death benefit amount is the mean of the death benefit amount on the most recent Contract anniversary and the death benefit amount on the immediately preceding Contract anniversary.

3. 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 from the net assets of the Separate Account and the Other Accounts in connection with the Contracts and Future Contracts of the 1.00% charge for the assumption of mortality an expense risks, and .35% of the average death benefit amount for the enhanced death benefit charge, and to exempt Future Broker-Dealers.

4. Applicants assert that the terms of the relief requested with respect to any Future Contracts funded by the Separate Account or Other Accounts, as well as for Future Broker-Dealers, are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief for each new Other Account it establishes to fund any Future Contract, as well as for each Future Broker-Dealer that distributes the Contracts or the Future Contracts. Applicants submit that any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this application, and that investors would not receive any benefit or additional protections thereby.

Applicants submit that the requested relief is appropriate in the public interest, because it would promote competitiveness in the variable annuity contract market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing their administrative expenses and maximizing the efficient use of their resources. The delay and expense involved in having repeatedly to seek exemptive relief would reduce Applicants' ability effectively to take advantage of business opportunities as they arise.

Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Applicants thus 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 1940 Act.

5. Applicants represent that the 1.00% per annum mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as, among others, the current charge levels and benefits provided, the existence of

expense charge guarantees, guaranteed death benefits, and guaranteed annuity rates. United of Omaha will maintain at its principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Applicants' comparative review.

6. Applicants also assert that the charge equal to an annual rate of .35% of the average death benefit amount for Contracts and Future Contracts issued with the enhanced death benefit is reasonable in relation to the risks assumed by United of Omaha. In arriving at this determination, United of Omaha projected its expected cost in providing this benefit by using the price of put options which could be used to hedge the risk inherent in providing the enhanced death benefit. United of Omaha undertakes to maintain at its home office a memorandum, available to the Commission, setting forth in detail the methodology used in determining that the risk charge equal to an annual rate of .35% of the average death benefit amount under certain Contracts and Future Contracts for the enhanced death benefit is reasonable in relation to risks assumed by United of Omaha under the Contracts and Future Contracts.

7. United of Omaha has concluded that there is a reasonable likelihood that the Separate Accounts and Other Accounts' proposed distribution financing arrangements will benefit the Separate Accounts and their investors. United of Omaha represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

8. The Separate Account and Other Accounts will be invested only in management investment companies that undertake, in the event the company should adopt a plan for financing distribution expenses pursuant to Rule 12b-1 under the 1940 Act, to have such plan formulated and approved by the company's board members, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

9. Section 2(a)(32) of the 1940 Act defines a redeemable security as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(c)(1) of the 1940 Act and Rule 22c-1 thereunder, in pertinent part, prohibit a registered investment company, its

depositor, or principal underwriter, from selling periodic payment plan certificates unless such certificates are redeemable securities.

10. Applicants request exemptions from Sections 2(a)(32), 22(c), and 27(c)(1) of the 1940 Act, and Rule 22c-1 thereunder, to permit the deduction upon surrender of the prorated enhanced death benefit equal to .35% of the average death benefit.

11. Applicants assert that the enhanced death benefit charge is assessed to compensate United of Omaha for the increase risk it bears if the Contract owner elects the enhanced death benefit. The death benefit represents an optional insurance benefit that United of Omaha may provide through the life of the Contract or Future Contract for which it is entitled to receive compensation. Normally, the enhanced death benefit charge accrues each Contract year and is deducted retroactively on each Contract anniversary, for that prior Contract year. By deducting a prorated enhanced death benefit charge upon a Contract owner's surrender, the Contract owner compensates United of Omaha for the additional risk the company bears during the period between the last Contract anniversary and the date of surrender.

12. Applicants further assert that the assessment of the prorated enhanced death benefit charge upon surrender does not alter a Contract owner's current net asset value. As previously discussed, United of Omaha deducts the enhanced death benefit charge through the cancellation of a Contract owner's accumulation units. Accordingly, the assessment of the prorated enhanced death benefit charge upon surrender, or at any other time during the life of a Contract or Future Contract, will not alter the Contract or Future Contract's current net asset value.

13. In addition, Applicants assert that the assessment of a prorated enhanced death benefit charge upon a Contract owner's surrender, which is fully disclosed in the prospectus for the Contract, should not be construed as a restriction on redemption. Applicants maintain that the Contracts and Future Contracts are and will be redeemable securities and that the imposition of the prorated enhanced death benefit charge upon surrender represents nothing more than the proportionate deduction of an insurance charge that could otherwise be deducted daily through the life of the Contract or Future Contract. Moreover, as stated previously, Applicants only assess the charge if the Contract owner has elected the enhanced death benefit.

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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[Rel. No. IC-21152; 812-9592]

Van Kampen American Capital Equity Opportunity Trust, Series 10

June 20, 1995.

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

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

APPLICANT: Van Kampen American Capital Equity Opportunity Trust, Series 10.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicant from section 12(d)(3) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order on behalf of itself and subsequently established series (the "Series") to permit each Series to invest up to 10.5% of its total assets in securities of issuers that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

FILING DATE: The application was filed on May 10, 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 17, 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 NW., Washington, DC 20549.

Applicants, Van Kampen American Capital Distributors, Inc., One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942-0563, or Robert A. Robertson, Branch Chief, (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

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.

Applicant's Representations

1. Each Series will be a series of applicant, a unit investment trust registered under the Act. Van Kampen American Capital Distributors, Inc. is applicant's depositor (the "Sponsor").

2. Each Series will invest approximately 10%, but in no event more than 10.5%,¹ of the value of its total assets in each of the ten common stocks in the FT Index or the Hang Seng Index, as the case may be, having the highest dividend yields in such respective index for a specified period (e.g. approximately one year).

3. The FT Index is comprised of 30 companies representative of British industry and commerce. The average shares outstanding for each FT Index company is 187,894,000. All of the FT Index companies are listed and traded on the London Stock Exchange. The Hang Seng Index is comprised of 33 companies representative of Hong Kong industry. The average number of shares outstanding for each Hang Seng Index company is 2,016,013.

4. The portfolio securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor will have no discretion as to which securities are purchased. Securities deposited in a Series may include securities of issuers that derived

¹The objective for each Series is to purchase securities so that each of the ten common stocks represents approximately 10% of the value of the Series' total assets on the initial date of deposit. However, the Sponsor generally purchases the securities for each Series in 100 share lots; if necessary to come closer to having each stock represent 10% of the value of a Series' assets, it will purchase securities in 50 share lots. It is most efficient to buy securities in 100 share lots and 50 share lots because it allows each of the ten common stocks of any Series to represent close to 10% of the value of a Series' total assets, while still permitting the Sponsor to obtain the best price for the securities. Therefore, in order to accommodate these purchase requirements, at the time of deposit into a Series' portfolio, some stocks may represent up to 10.5% of the value of the Series' assets, while others may represent less than 10%.

more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities, maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after the 90-day period following the initial date of deposit generally must replicate exactly the proportionate relationship among the face amounts of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the ten highest dividend yielding stocks.

6. A Series's portfolio will not be actively managed. Sales of portfolio securities will be made in connection with redemptions and at termination of the trust on a date specified a year in advance. The Sponsor does not have discretion as to when securities will be sold except that the Sponsor is authorized to sell securities in extremely limited circumstances. For example, if an issuer defaults on the payment on any of its outstanding obligations or the price of a security has declined to such an extent or other such credit facts exist so that in the opinion of the Sponsor the retention of such securities would be detrimental to the Series, the Sponsor may sell the securities. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security in any company which is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 under the Act exempts the purchase of securities of an issuer that derived less than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than 5% of the value of its total assets in securities of the issuer.

2. Section 6(c) of the Act provides that the SEC may exempt a person from any provision of the Act or any rule thereunder, if and to the extent that the 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.

3. Applicant requests an exemption under section 6(c) from section 12(d)(3)