

## 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.*

[FR Doc. 95-15572 Filed 6-23-95; 8:45 am]

BILLING CODE 8010-01-M

[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%,<sup>1</sup> 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 each 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

<sup>1</sup>The 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)

to permit any Series to invest up to approximately 10%, but in no event more than 10.5%, of the value of its total assets in securities of an issuer that derives more than 15% of its gross revenues from securities related activities. Each Series undertakes to comply with all of the conditions of rule 12d3-1, except that each Series seeks to invest up to approximately 10%, but in no event more than 10.5%, of that value of any Series' assets at its initial date of deposit in the securities of any company that is an issuer of any of the ten highest dividend yielding stocks in the FT Index or the Hang Seng Index.

4. Section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses to prevent potential conflicts of interests, and to eliminate certain reciprocal practices between investment companies and securities related businesses. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant believes that this concern does not arise in connection with its application because neither applicant nor the Sponsors have discretion in choosing the portfolio securities or percentage amount purchased. The security must first be included in the FT Index or the Hang Seng Index, which indexes are unaffiliated with the Sponsors and applicant, and must also qualify as one of the ten highest dividend yielding securities.

5. Applicant also believes that the effect of a Series's purchase on the stock of parents of broker-dealers would be *de minimis*. The common stocks of securities related issuers represented in the FT Index or the Hang Seng Index are widely held, have active markets, and applicant believes that the purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. Accordingly, applicant believes that it is highly unlikely that Series purchases of these securities would have any significant impact on the securities' market value.

6. Another potential conflict of interest could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each

Series agree, as a condition of this application, that no company held in a Series's portfolio nor any affiliate thereof will act as a broker for any Series in the purchase or sale of any security for its portfolio. In light of the above, applicant believes that its proposal meets the section 6(c) standards.

#### **Applicant's Condition**

Applicant and each Series agrees that any order granted under this application may be conditioned upon no company held in a Series's portfolio nor any affiliate thereof acting as broker for any Series in the purchase or sale of any security for a Series's portfolio.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-15573 Filed 6-23-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35864; File No. SR-PHLX-95-31]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Compliance With Position and Exercise Limits for Non-PHLX Listed Options**

June 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 22, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Currently, PHLX Rule 1001, "Position Limits,"<sup>1</sup> applies only to transactions by PHLX members or member organizations in Exchange-listed options. The PHLX proposes to amend PHLX Rules 1001 and 1002, "Exercise

Limits,"<sup>2</sup> to require PHLX members who trade non-PHLX listed options and who are not members of the exchange where the options transactions are effected to comply with the applicable option position and exercise limits of the exchange where the options transactions are effected.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposal is to eliminate a loophole in position and exercise limit jurisdiction among the option exchanges. According to the Exchange, a PHLX member entering into an opening transaction on another exchange in an option not listed on the PHLX and who is not a member of the exchange where the transaction is effected escapes the jurisdiction of both the PHLX and the other exchange for purposes of position limit compliance. The PHLX notes that Exchange Rule 1001 does not apply because the rule is limited to options dealt in on the PHLX. Likewise, if the transaction is effected by a non-member of the other exchange, the other exchange cannot enforce its position limit rule.

The PHLX believes that the proposed amendments to PHLX Rule 1001 should enable the PHLX to exercise jurisdiction over a PHLX member violating the position limit in a non-PHLX listed option. The PHLX believes that the same is true for exercise limits. The proposal applies to both equity options and index options.

<sup>1</sup> Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (i.e., aggregating long calls and short puts or long puts and short calls).

<sup>2</sup> Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.