shareholders. The parties contemplate shareholder meetings to approve the transactions prior to the end of 1996. The application states that consummation of the Basic Mergers is also subject to regulatory approvals, including those from state regulatory agencies,[6] and the submission of the notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

The Merger Agreement provides for termination upon the occurrence of certain events, to include failure to consummate the Basic Mergers by August 11, 1997. The Merger Agreement provides for a termination fee to be paid in certain circumstances, which fee ranges from $10 million to $75 million.

The application states that, on a gross-to-gross basis, the gross operating revenues of NorAm ($1.72 billion) in 1995 were approximately 47% of those of HL&P ($3.68 billion).

The application requests an order from the Commission under section 3(a)(2) of the Act, which exempts a public utility holding company if ''such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto.''

Entergy Gulf States, Inc. (70–8911)

Entergy Gulf States, Inc. (''Gulf States''), 350 Pine Street, Beaumont, Texas 77701, a wholly owned public-utility subsidiary of Entergy Corporation (''Entergy''), a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(d) of the Act and rule 44 thereunder.

Gulf States provides steam and associated byproduct electrical energy to Exxon Corporation (''Exxon'') at its petrochemical manufacturing facilities that surround and are contiguous to Gulf States' cogeneration facility, Louisiana Station No. 1, located in East Baton Rouge Parish, Louisiana (''Louisiana Station''). Louisiana Station was originally constructed to serve the steam and electrical requirements of the Exxon facility and has been primarily dedicated to that purpose since its construction.

Pursuant to an arrangement between Exxon and Gulf States, Exxon supplies fuel to Louisiana Station that is converted into steam and byproduct electricity which is then delivered to the Exxon facility. The amount of electricity produced from this process is not normally sufficient to met Exxon's requirements and Exxon purchases additional electricity from Gulf States pursuant to an electric service contract.

Gulf States and Exxon propose to enter into an agreement that would allow for the modernization of the Louisiana Station to improve its reliability and efficiency and potentially increase its capacity for the continued production of steam and electric energy produced from fuel supplied by Exxon. To facilitate the above-mentioned transaction, Gulf States now proposes to enter into an Agreement for Lease of Generating Facilities (''Lease''), a Base Facility Sublease and Lease of Additions and Betterments (''Sublease'') and other related agreements.

Pursuant to the Lease, Gulf States will lease to Exxon its generating facilities and certain property located within and surrounding the Louisiana Station upon which Exxon proposes to construct a new gas-fired turbine and associated facilities. All capital and other costs to effect such modernization will be borne by Exxon. Gulf States has certain termination rights should Exxon fail to commence the modernization of Louisiana Station by appropriating funds within one (1) year of the date of the grant of all necessary regulatory approvals.

The Lease has an initial term in excess of twenty (20) years with two (2) optional term extensions of ten (10) years. The initial term is divided into two (2) stages, Phases 1 and 2. Generally, Phase 1 is the period during which Exxon is to complete modernization of Louisiana Station, which should not exceed thirty (30) months from the date Gulf States secures all necessary regulatory approvals. Phase 2 is the twenty (20) year period thereafter.

During Phase 1 of the Lease, the Sublease will be in effect in order that Gulf States may continue to use the facilities to fulfill its obligations to Exxon under an existing steam contract. Pursuant to the Sublease, Gulf States will pay the same monthly rent that Exxon is obligated to pay under the Lease. Steam and electric service rendered by Gulf States to Exxon during the same period will be paid for at the rates as set forth in an Amended and Restated Steam Contract (''Steam Contract''), and any additional electricity shall be provided to Exxon pursuant to the existing Electric Agreement.

By structuring the transaction to include both the Lease and the Sublease, Exxon may immediately commence modernization of Louisiana Station and Gulf States may continue to fulfill its contractual obligations to the Steam Contract.

Phase 2 of the Lease will commence once improvements and modernization to Louisiana Station are complete, and Exxon shall begin to pay Gulf States a monthly fixed rent and a monthly variable rent up to a stated maximum amount depending upon the quantity of steam generated by Louisiana Station. The Sublease will no longer be in effect.

Also during Phase 2, Gulf States will provide equipment, personnel and services required for operation and maintenance of the facility pursuant to an operating and maintenance service agreement (''Operating Agreement''). Gulf States will be compensated for its services under this Operating Agreement by a fee structure that includes, in addition to reimbursement of its expenses, the payment of an overhead fee and an incentive fee. The overhead fee is fixed initially at a stated minimum per year and will not be subject to renegotiation more than every two (2) years. The incentive fee is fixed at a stated maximum per year based upon Gulf States attainment of certain performance goals, and the company has the opportunity to earn other incentives based on cost savings.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27391 Filed 10–24–96; 8:45 am]

BILLING CODE 8010–01–M

[6] The application states that the Basic Mergers are subject to review by regulatory commissions in each state other than Texas in which NorAm conducts utility operations. HI and NorAm will request prior approval of the Basic Mergers from the Minnesota Public Utilities Commission, the Arkansas Public Service Commission, the Oklahoma Corporation Commission, the Louisiana Public Service Commission, and the Mississippi Public Service Commission. Each of those agencies regulates rates and services provided by a NorAm division and is expected to review the transaction to assure that it is not inconsistent with the public interest. Texas statutes do not require HI and NorAm to obtain approval of the transaction from the Texas Railroad Commission (''Railroad Commission'') or the Texas Public Utility Commission (''TPUC''). However, the Basic Mergers will not affect the authority of the Railroad Commission over operations of NorAm or the authority of the TPUC over the operations of HL&P. In addition, NorAm and HI are currently engaged in informal discussions with the Railroad Commission and the TPUC on the Basic Mergers.

[Investment Company Act Rel. No. 22293; 812–10256]

Van Kampen American Capital Equity Opportunity Trust, et al.; Notice of Application

October 21, 1996.

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

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

APPLICANTS: Van Kampen American Capital Equity Opportunity Trust (the ''Trust''), on behalf of itself and certain subsequent series (each a ''Series''), and Van Kampen American Capital Distributors, Inc. (the ''Sponsor'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 12(d)(1)(F)(ii) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit each Series of the Trust to offer units (''Units'') with a sales load in excess of the 1.5% limit contained in section 12(d)(1)(F)(ii) of the Act.

FILING DATES: The application was filed on July 22, 1996, and amended on September 5, 1996.

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 November 15, 1996, 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 such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Alison E. Baur, 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.

Applicants' Representations

1. The Trust is a unit investment trust (''UIT'') registered under the Act. Each Series also will be a UIT, and will be similar but separate and designated by a different Series number. The Sponsor, a registered broker-dealer and member of the National Association of Securities Dealers, Inc. (''NASD''), is the sponsor for each Series. Each Series will be created under state law pursuant to a trust agreement that will contain information specific to that Series, and will incorporate by reference a master trust agreement between the Sponsor and a financial institution that satisfies the criteria in section 26(a) of the Act (the ''Trustee''). The trust agreement and the master trust agreement are referred to collectively as the ''Trust Agreement.''

2. Each Series will contain a portfolio of shares of investment companies or series thereof (the ''Funds'') that are not affiliated with any of the applicants. Each Series may invest either in only one type of investment company or in a combination of the various types of investment companies. The shares of the Funds will be deposited in each Series at net asset value, or, if the Fund shares are listed on a national securities exchange or traded on the Nasdaq National Market System (''Nasdaq-NMS''), at their ''market value.'' Market value will be determined by an evaluator, and generally will be based on the closing sale prices (or, if unavailable, the closing ask prices) for the securities traded on an exchange, and on the closing ask prices for the securities traded on the Nasdaq-NMS.

3. Each of the Funds will be registered as a closed-end investment company (''Closed-End Funds''), an open-end investment company (''Open-End Funds''), or a UIT. In addition, certain of the Funds may be either an Open-End Fund or a UIT that has received exemptive relief to sell its shares at ''negotiated prices'' on an exchange in the same manner as other equity securities.[1]

4. Simultaneously with the deposit of Fund shares into a Series, the Trustee will deliver to the Sponsor registered certificates for Units that represent the entire ownership of the Series. During the initial public offering, these Units will be offered at prices based on the aggregate underlying value of the Fund shares, plus a sales charge. The sales charge (either a front end or a deferred sales load, or a combination thereof) shall not, when aggregated with any sales charge or service fees paid by the Series with respect to shares of the Funds, exceed the limits set forth in Rule 2830(d) of the NASD's Conduct Rules. No Series will invest in a Fund with a rule 12b–1 plan, unless the Fund limits the plan fees to a maximum annual rate of .25% of the Fund's average daily net assets.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities issued by another investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the value of the total assets of the acquiring company, or if securities issued by the acquired company and all other investment companies have an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(F) provides that section 12(d)(1) shall not apply to securities purchased or otherwise acquired by a registered investment company if, immediately after the purchase or acquisition, not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company, and the acquiring company does not offer or sell any security issued by it at a price that includes a sales load of more than 1.5%. In addition, no issuer of any security purchased or acquired by such registered investment company shall be obligated to redeem such security in an amount exceeding 1% of such issuer's total outstanding securities during any period of less than 30 days.

3. Section 6(c) provides that the SEC may exempt any 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 of 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. Applicants therefore request an exemption under section 6(c) to permit a Series to offer Units with a sales load in excess of the 1.5% limitation, subject to the conditions set forth herein. Applicants believe the requested relief meets the standards for an exemption set forth in section 6(c).

4. Applicants argue that section 12(d)(1) is intended to mitigate or eliminate actual or potential abuses that might arise when one investment company acquires shares of another investment company. These abuses include: (a) the layering of sales charges, advisory fees, and administrative costs; (b) the imposition of undue influence by the acquiring fund over the management of the acquired funds through threat of large scale redemptions; (c) the acquisition by the acquiring company of voting control of the acquired company;

[1] *See, e.g.*, Foreign Fund Inc., Investment Company Act Release Nos. 21737 (Feb. 6, 1996) (notice) and 21803 (Mar. 5, 1996) (order), and SPDR Trust, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (Oct. 26, 1992) (order).

and (d) the creation of a complex pyramidal structure that may be confusing to investors. Applicants do not believe that any of these potential or actual abuses are present in their proposed trust of funds structure.

5. Applicants assert that the structure of the Series will not result in excessive fees. Each Series, as a UIT, has an unmanaged portfolio and, therefore, does not assess advisory fees. Unitholders of a Series, however, would bear their portion of the advisory fees charged the underlying Funds, if any, for services rendered by the Fund's respective investment adviser. Applicants also contend that there will be no overlapping of sales charges or distribution fees. While each Series will charge a sales load, the Sponsor will deposit the Fund shares in the Series at net asset value (*i.e.*, without any sales charge), or, if the shares of the Funds are traded on an exchange or Nasdaq-NMS, at their market value. In addition, each Series, as a UIT, does not charge a rule 12b–1 fee, and no Series would invest in a Fund with a rule 12b–1 plan unless the Fund limits its rule 12b–1 fee to a maximum annual rate of .25% of the Fund's average daily net assets. Finally, applicants have agreed as a condition to the relief that any sales charge assessed with respect to the Units of a Series, when aggregated with any sales charges and service fees paid by the Series with respect to securities of the underlying Funds, shall not exceed the limits set forth in Rule 2830(d) of the Conduct Rules of the NASD. As a result, the aggregate sales charges will not exceed the limit that otherwise lawfully could be charged at any single level.

6. Administrative fees may be charged at both the Series and underlying Fund levels. However, applicants believe that certain Trust expenses may be reduced under the proposed arrangement. For example, when a Series invests in shares of Open-End Funds, whose net asset value is readily available, applicants anticipate that the evaluator would charge a lower fee, if any at all. A Series may incur customary brokerage commissions with respect to the purchase of Fund shares traded on an exchange or Nasdaq-NMS, but applicants represent that the Sponsor will purchase these shares in the secondary market and thus avoid payment of any underwriting spreads common during the initial offering of such shares.

7. Applicants argue that the concern of large-scale redemptions is not applicable with respect to a Fund that is a Closed-End Fund, because such Funds do not issue redeemable securities. Section 12(d)(1)(F) addresses this concern with respect to Funds issuing redeemable securities by providing that the Fund will not be obligated to redeem its securities in an amount exceeding 1% of its total outstanding securities during any period of less than 30 days, and applicants will comply with this provision. Applicants believe that the unmanaged nature of UITs precludes the concern of large scale redemptions or sales during the life of a Series because each Series is limited as to when it may sell its portfolio securities.

8. Applicants do not believe that pyramiding of control is a concern with respect to the proposed trust of funds structure because each Series will comply with section 12(d)(1)(F) (other than the sales load limitation therein), which requires the Series to exercise the voting rights with respect to any acquired securities in the manner prescribed by section 12(d)(1)(E). Section 12(d)(1)(E) requires the acquiring investment company either to seek instructions from its security holders with regard to the voting of all proxies with respect to any acquired security and to vote such proxies only in accordance with such instructions, or to vote the shares held by it in the same proportion as the vote of all other holders of such security.

9. Applicants represent that the proposed trust of funds structure is unlikely to give rise to concerns of undue complexity because they have agreed that no Series will invest in any Fund that, at the time of acquisition, owns securities in excess of the limits contained in section 12(d)(1)(A). However, if a Fund subsequently acquires securities of other investment companies in excess of the limits in section 12(d)(1), the Series will not be required to divest itself of its holdings. Applicants argue that, because the Funds are not affiliated with the Trust, the Series cannot bind or control the Funds.

10. Applicants believe that the proposed trust of funds structure will be adequately disclosed and explained to investors in each Series' prospectus. Applicants state that they will fully disclose in each prospectus all loads, fees, expenses, and charges incurred with an investment in the respective Series. The prospectus also will include disclosure that investors will pay indirectly a portion of the expenses of the underlying Funds. In addition, the prospectus for each Series will include the table required by item 2 of Form N-1A (modified to reflect the differences between UITs and Open-End Funds) to set forth the Series' operating expenses and unitholders' transaction costs.

11. Applicants believe that it is appropriate to apply the NASD's rules to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii). Applicants argue that the NASD's specific sales charge rules, which recently were amended to limit asset-based sales charges and service fees, more accurately reflect the current methods used by funds to finance sales expenses, while section 12(d)(1)(F), adopted more than 25 years ago, does not reflect the changes in the industry's pricing practices.

12. Applicants assert that the trust of funds proposal will benefit potential unitholders as well as shareholders of the Funds. Applicants believe that, given the number and variety of funds now available for investment, a Series provides a simple means through which investors can obtain a professionally selected and maintained mix of investment company shares for a relatively small initial investment. Applicants also believe that each Series will provide potential investors with the opportunity to participate in a diversified portfolio of investment company shares in one package and at one sales load. Applicants anticipate that purchasing shares in large quantities will enable a Series to obtain certain economies of scale, and will benefit certain Funds by permitting them to carry a Series on their books as a single shareholder account, even though there are numerous unitholders, and by providing them with a stable asset base.

Applicants' Conditions

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

1. Each Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges or service fees charged with respect to Units of Series, when aggregated with any sales charges or services paid by the Series with respect to securities of the underlying Funds, shall not exceed the limits set forth in rule 2830(d) of the NASD's Conduct Rules.

3. No Series will acquire securities of an underlying Fund that, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27436 Filed 10–24–96; 8:45am]

BILLING CODE 8010–01–M

[Rel. No. IC–22290; No. 812–10190]

Variable Investment Trust, et al.

October 18, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an exemption pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Variable Investment Trust (the ''Trust''), GE Investment Management Incorporated (''GEIM'') and certain life insurance companies and their separate accounts investing now or in the future in the Trust.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemption from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of the Trust and any other investment company that is offered to fund variable insurance products and for which GEIM, or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter, or sponsor (collectively, ''Investment Companies'') to be sold to and held by the separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts (''Variable Contracts'') issued by affiliated or unaffiliated life insurance companies (''Participating Insurance Companies'') or qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

FILING DATE: The application was filed on June 5, 1996, and amended and restated on October 11, 1996.

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 Secretary of the Commission 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 November 12, 1996, and must 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 Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Matthew J. Simpson, Esq., GE Investment Management Incorporated, 3003 Summer Street, Stamford, Connecticut 06905.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the 1940 Act as an open-end management investment company. The Trust currently consists of five separate investment portfolio (''Portfolios''), and may establish additional portfolios.

2. GEIM, a wholly-owned subsidiary of General Electric Company, serves as investment adviser to each Portfolio of the Trust.

3. The Investment Companies will serve as investment vehicles for various types of Variable Contracts. Shares of the Investment Companies will be offered to Separate Accounts of Participating Insurance Companies which enter into participation agreements with the Trust. These Separate Accounts may be registered with the Commission under the 1940 Act or exempt from registration under Section 3(c)(1) thereof.

4. Each participating Insurance Company will have the legal obligation of satisfying all applicable requirements under state law and the federal securities laws in connection with any Variable Contract issued by such company. The role of the Investment Companies under this arrangement will consist of offering shares to the Separate Accounts and fulfilling any conditions the Commission may impose upon granting the order requested in this application.

5. The Trust desires to avail itself of the opportunity to increase its asset base through the sale of its shares to Qualified Plans, consistent with applicable tax law. The Qualified Plans may choose any of the Investment Companies as the sole investment option under the Qualified Plan or as one or several investment options. Participants in Qualified Plans may or may not be given an investment choice among available alternatives, depending on the Qualified Plan itself. Shares of any Investment Company sold to Qualified Plans would be held by the trustee(s) of such Qualified Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). To the extent permitted under applicable law, GEIM may act as investment adviser to any of the Qualified Plans that will purchase shares of the Trust. Applicants note that pass-through voting is not required to be provided to participants in Qualified Plans under ERISA.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit ''mixed'' and ''shared'' funding, as defined below.

2. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an 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.

3. Rule 6e–2(b)(15) provides partial exemptive relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to separate accounts registered under the 1940 Act as unit investment trusts to the extent necessary to offer and sell scheduled premium variable life insurance contracts. The relief provided by the rule also extends to the investment adviser, principal underwriter, and sponsor or depositor of a separate account.

4. The exemptions granted by Rule 6e–2(b)(15) are available only to a management investment company underlying a separate account (''Underlying Fund'') that offers its shares exclusively to variable life insurance separate accounts of a life insurer, or of any other affiliated life insurance company, issuing scheduled premium variable life insurance contracts. The relief granted by Rule 6e–2(b)(15) is not available to a separate account issuing scheduled premium variable life insurance contracts if the Underlying Fund also offers its shares to a separate account issuing variable annuity or flexible premium variable life insurance contracts. The use of a common Underlying Fund as an investment vehicle for both variable