

acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination will be made without imposition of any otherwise applicable sales load and at net asset value.

7. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of a reinvestment option will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b-1 fee.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Rel. No. IC-21773; 812-9882]

### Van Kampen American Capital, Inc. et al.; Notice of Application

February 23, 1996.

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

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

**APPLICANTS:** Van Kampen American Capital Equity Trust, Van Kampen American Capital Pennsylvania Tax Free Income Fund, Van Kampen American Capital Tax Free Trust, Van Kampen American Capital Tax Free Money Fund, Van Kampen American Capital Trust, Van Kampen American Capital U.S. Government Trust, Van Kampen American Capital Comstock Fund, Van Kampen American Capital Corporate Bond Fund, Van Kampen American Capital Emerging Growth Fund, Van Kampen American Capital Enterprise Fund, Van Kampen American Capital Equity Income Fund, Van Kampen American Capital Global Managed Assets Fund, Van Kampen American Capital Government Securities Fund, Van Kampen American Capital Government Target Fund, Van Kampen American Capital Growth and Income Fund, Van Kampen American Capital Harbor Fund, Van Kampen American Capital High Income Corporate Bond Fund, Van Kampen American Capital Life Investment Trust, Van Kampen American Capital Limited Maturity Government Fund, Van Kampen American Capital Pace Fund, Van Kampen American Capital Real Estate Securities Fund, Van Kampen American Capital Reserve Fund, Van Kampen American Capital Small Capitalization Fund, Van Kampen American Capital Tax-Exempt Fund, Van Kampen American Capital Texas

Tax Free Income Fund, Van Kampen American Capital U.S. Government Trust for Income, and Van Kampen American Capital World Portfolio Series Trust (collectively, the "Open-End Funds"); Van Kampen American Capital Municipal Income Trust, Van Kampen American Capital California Municipal Trust, Van Kampen American Capital Intermediate Term High Income Trust, Van Kampen American Capital Limited Term High Income Trust, Van Kampen American Capital Prime Rate Income Trust, Van Kampen American Capital Investment Grade Municipal Trust, Van Kampen American Capital Municipal Trust, Van Kampen American Capital California Quality Municipal Trust, Van Kampen American Capital Florida Quality Municipal Trust, Van Kampen American Capital New York Quality Municipal Trust, Van Kampen American Capital Ohio Quality Municipal Trust, Van Kampen American Capital Pennsylvania Quality Municipal Trust, Van Kampen American Capital Trust for Investment Grade Municipals, Van Kampen American Capital Trust for Insured Municipals, Van Kampen American Capital Trust for Investment Grade California Municipals, Van Kampen American Capital Trust for Investment Grade Florida Municipals, Van Kampen American Capital Trust for Investment Grade New Jersey Municipals, Van Kampen American Capital Trust for Investment Grade New York Municipals, Van Kampen American Capital Trust for Investment Grade Pennsylvania Municipals, Van Kampen American Capital Municipal Opportunity Trust, Van Kampen American Capital Advantage Municipal Income Trust, Van Kampen American Capital Advantage Pennsylvania Municipal Income Trust, Van Kampen American Capital Strategic Sector Municipal Trust, Van Kampen American Capital Value Municipal Income Trust, Van Kampen American Capital California Value Municipal Income Trust, Van Kampen American Capital Massachusetts Value Municipal Income Trust, Van Kampen American Capital New Jersey Value Municipal Income Trust, Van Kampen American Capital New York Value Municipal Income Trust, Van Kampen American Capital Ohio Value Municipal Income Trust, Van Kampen American Capital Pennsylvania Value Municipal Income Trust, Van Kampen American Capital Municipal Opportunity Trust II, Van Kampen American Capital Florida Municipal Opportunity Trust, Van Kampen American Capital Advantage Municipal Income Trust II, and Van

Kampen American Capital Select Sector Municipal Trust (collectively, the "Closed-End Funds," together the Open-End and Closed-End Funds are the "Funds"); and Van Kampen American Capital Investment Advisory Corp. and Van Kampen American Capital Asset Management, Inc. (collectively, the last two entities are the "Advisers").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) and rule 2a-7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and under section 17(d) of the Act and rule 17d-1 thereunder to permit certain joint arrangements.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit the Funds to enter into deferred compensation arrangements with their independent trustees. The requested order would supersede a prior order (the "Merritt Order").<sup>1</sup>

**FILING DATES:** The application was filed on December 8, 1995, and amended on January 19, 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 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 March 19, 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 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:** Elaine M. Boggs, Staff Attorney, at (202) 942-0572, or Robert A. Robertson, 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 at the SEC's Public Reference Branch.

<sup>1</sup> *Van Kampen Merritt Trust*, Investment Company Act Release Nos. 20473 (Aug. 11, 1994) (notice) and 20530 (Sept. 6, 1994) (order).

### Applicants' Representations

1. Each of the Open-End Funds is a Delaware business trust registered under the Act as an open-end management investment company, except for one which is a Pennsylvania trust. Several of the Open-End Funds are organized as series companies. The Closed-End Funds are either Massachusetts or Pennsylvania trusts and are closed-end management investment companies registered under the Act. The Advisers, wholly-owned subsidiaries of Van Kampen American Capital, Inc., serve as each Fund's investment adviser and are registered under the Investment Advisers Act of 1940.

2. Each Fund has a board of trustees, a majority of the members of which are not "interested persons" of such Fund within the meaning of section 2(a)(19) of the Act. Each of the trustees who is not an "interested person" receives annual fees which collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Funds. Applicants request an order to permit the trustees who are not interested persons and who receive trustee fees from one or more of the Funds (the "Eligible Trustees") to elect to defer receipt of all or a portion of their fees pursuant to a deferred compensation plan (the "Plan"). Under the Plan, the Eligible Trustees could defer payment of trustees' fees (the "Deferred Compensation") in order to defer payment of income taxes or for other reasons. Applicants request that relief be extended to any existing or subsequently registered investment company advised by an Adviser or a registered investment adviser under common control or controlled by an Adviser. (Such future funds are also referred to as the "Funds".)

3. Certain of the Funds already have deferred compensation plans in effect for their Eligible Trustees pursuant to an existing SEC order<sup>2</sup> (the "Comstock Order") while others are relying on the Merritt Order. Funds with existing deferred compensation plans established under the Comstock Order will retain the cash for trustees who elect to defer their compensation and the deferred amounts will earn a return based upon the return of the underlying Fund or the return on such Fund's investment of cash reserves in money market instruments. The proposed Plan, however, is broader and provides for the return on deferred amounts to be based upon the return of the underlying Fund or the return of other Funds in the fund

complex and allows Funds to hedge the deferred obligation by purchasing shares of other Funds. Applicants would like all the Funds to be able to rely on the same order and to be subject to the same terms and conditions. The requested order would supersede the Merritt Order but have no effect on the Comstock Order. Each participant in the plans established under the Comstock Order will be given a one-time election to have his or her existing deferred account balance roll over into new accounts established under the requested order.

4. Under the Plan, the deferred fees payable by a Fund to a participating Eligible Trustee will be credited to a book reserve account established by the Fund (a "Deferred Fee Account"), as of the first business day following the date such fees would have been paid to the Eligible Trustee. The deferred fees will accrue income from and after the date of credit in an amount equal to the amount that would have been earned had such fees (and all income earned thereon) been invested and reinvested in shares of the Funds designated by the respective board of trustees as eligible investments under the Plan (the "Investment Funds"). In the case of trustees of the Open-End Funds, Investment Funds will be Open-End Funds, and in the case of trustees of the Closed-End Funds, Investment Funds will be Closed-End Funds.

5. The Funds' respective obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their respective general assets and property. The Plan provides that the Funds will be under no obligation to purchase, hold or dispose of any investments under the Plan, but, if one or more of the Funds choose to purchase investments to cover their obligations under the Plan, then any and all such investments will continue to be a part of the respective general assets and property of such Funds.

6. Any participating money market series of a Fund that values its assets in accordance with a method prescribed by rule 2a-7 will buy and hold the Underlying Securities that determine the performance of the Deferred Fee Accounts in order to achieve an exact match between such series' liability to pay deferred fees and the assets that offset such liability. In addition, as a matter of prudent risk management, to the extent an Eligible Trustee selects Investment Funds other than the Fund that pays that trustee's fees, it is intended that the Fund responsible for the Trustee's fees will purchase and hold shares in an amount equal to the

designated investment in such Investment Funds (the "Underlying Securities"). Thus, in cases where a Fund purchases Underlying Securities, the amount of Underlying Securities is expected to match the liability created by credits to the Fund's Deferred Fee Accounts.

7. Payments under the Plan will be made in generally equal annual installments over a five year period beginning on the first day of the year following the year in which the Eligible Trustee's termination of service occurred. In the event of death prior to any distribution, such trustee's Deferred Fee Account will become payable in cash to the trustee's designated beneficiary in equal installments over a five year period. In the event of death after the commencement of the distribution, the balance of such account will be distributed to the designated beneficiary over the remaining portion of the five-year period. The Plan will not obligate any participating Fund to retain a trustee in such a capacity, nor will it obligate any Fund to pay any (or any particular level of) trustees' fees to any director.

### Applicants' Legal Analysis

1. Applicants request an order which would exempt the Funds: (a) Under section 6(c) of the Act from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), 23(a) and rule 2a-7 thereunder, to the extent necessary to permit the Funds to adopt and implement the Plan; (b) under sections 6(c) and 17(b) of the Act from section 17(a)(1) to permit the Funds to sell securities for which they are the issuer to participating Funds in connection with the Plan; and (c) under section 17(d) of the Act and rule 17d-1 thereunder to permit the Funds to effect certain joint transactions incident to the Plan.

2. Sections 18(a) and 18(f)(1) generally prohibit registered closed-end and open-end investment companies, respectively, from issuing senior securities. Section 18(c) of the Act generally provides that registered closed-end investment companies may not have outstanding more than one class of senior security representing indebtedness. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact section 18. The Plan would not induce speculative investments, affect control of any Fund,

<sup>2</sup> American Capital Comstock Fund, Inc., Investment Company Act Release Nos. 18098 (Apr. 15, 1991) (notice) and 18144 (May 14, 1991) (order).

confuse investors, or convey a false impression as to the safety of their investments. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on redeemability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth all such restrictions, which would be included primarily to benefit the Eligible Trustees and would not adversely affect the interests of the shareholders of the Open-End Funds.

4. Section 22(g) and 23(a) prohibit registered open-end and closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. This provision prevents the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

5. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Each of the Funds named in the application adopted an investment policy regarding the purchase of shares of other investment companies, which policy could prohibit or restrict such Funds from purchasing shares of other investment companies. The relief requested from section 13(a)(3) would extend only to the named applicants. Applicants believe that relief from section 13(a)(3) is appropriate to enable the affected Funds to invest in Underlying Securities without a shareholder vote. Each Fund will disclose the existence of the Plan in its registration statement. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Fund, and will at all times equal the value of the Fund's obligations to pay deferred fees (plus any increase in value thereof.)

6. Rule 2a-7 imposes certain restrictions on the investments of "money market funds," as defined under the rule that would prohibit a Fund that is a money market Fund from investing in the shares of any other Fund. Applicants believe that the

requested exemption would permit the Fund to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fees would not affect net asset value.

7. Section 6(c) provides, in relevant part, that the SEC may by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the relief requested satisfies this standard.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company.<sup>3</sup> Applicants assert that section 17(a)(1) was designed to prevent, among other things, sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicants believe that the sale of securities issued by the Funds pursuant to the Plan does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred trustees' fees.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. Applicants believe that the proposed transaction satisfies the criteria of section 17(b). The finding that the terms of the transaction are consistent with the policies of the registered investment company is predicated on the assumption that relief is granted from section 13(a)(3). Applicants also request relief from section 17(a)(1) under section 6(c) to the extent necessary to implement the Deferred Compensation under the Plan on an ongoing basis.<sup>4</sup>

<sup>3</sup> Section 2(a)(3)(C) of the Act defines the term "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person. Thus, the Funds may be subject to the prohibitions of section 17(a)(1).

<sup>4</sup> Section 17(b) may permit only a single transaction, rather than a series of on-going

10. Section 17(d) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant in contravention of such rules and regulations as the SEC may prescribe. Rule 17d-1 permits an affiliated person to engage in a joint transaction if the SEC issues an order approving the arrangements. Eligible Trustees will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholders. Eligible Trustees will receive tax deferral but the Plan otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a Eligible Trustee, the Eligible Trustee will be no better off, relative to the Funds, than if he or she had received trustees fees on a current basis and invested them in Underlying Securities.

#### Applicants' Conditions

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

1. Any money market Fund that values its assets in accordance with a method prescribed by rule 2a-7 will buy and hold any Underlying Securities that determine performance of the Deferred Fee Accounts to achieve an exact match between such Funds' liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases shares issued by an affiliated Fund, the Fund will vote such shares in the same proportion as the shares of all other shareholders of such affiliated Fund.

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

Margaret H. McFarland,

*Deputy Secretary.*

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transactions, to be exempted from section 17(a). See *Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).