Fund that in the future relies on the order will do so in a manner consistent with the terms and conditions of the application.

3. The Funds intend to continuously offer their shares to the public at net asset value. Initially, the Fund will be sold without a front-end sales charge, but the Fund and certain other Funds may be in the future impose a front-end sales charge. The Funds do not intend to list their shares on any national securities exchange or over-the-counter market and there will be no secondary market for shares of the Funds. The Funds intend to operate as ''interval funds'' pursuant to rule 23c–3 under the Act and make periodic repurchase offers to their shareholders.

4. The Funds propose to impose EWCs on shares accepted for repurchase that have been held for less than a certain period of time. The EWCs will be paid to the Distributor to allow it to recover a portion of its distribution expenses. The EWC to be imposed by the Fund is expected to be 1% of the lesser of the then current net asset value or the original purchase price of the shares being tendered for shares held less than twelve months. The Funds may in the future impose EWCs in different amounts or for different time periods.

5. In the future, the Funds may pay service fees that will meet the requirements of Rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (the ''NASD'') as if the Fund were an open-end fund.[1] Any service fee payments will be in amounts not to exceed .25% of a Fund's average daily net assets for any fiscal year. Any front-end sales charge imposed by a Fund also will comply with the NASD's Conduct Rule 2830(d) as if the Fund were an open-end fund.

6. The Funds propose to waive the EWC for certain categories of shareholders or transactions to be established in the future. With respect to any waiver of, scheduled variation in, or elimination of the EWC, the Funds will comply with rule 22d–1 under the Act as if the Funds were open-end funds.[2]

[1] The Funds will not impose any distribution fees similar to those charged by open-end funds under rule 12b–1 under the Act.

[2] The Funds may offer their shareholders an option to exchange their shares for shares of registered open-end investment companies in the Franklin/Templeton group of investment companies (as defined in rule 11a–3 under the Act). Any such exchange option will comply with rule 11a–3 as if the Funds were open-end investment companies subject to the rule. In complying with rule 11a–3, the Funds will treat the EWC as if it were a contingent deferred sales charge.

Applicants' Legal Analysis

1. Section 23(c) of the Act provides in relevant part that no registered closed-end fund will purchase any securities of which it is the issuer except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end fund (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the fund. Rule 23c–3(b)(1) provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase. Applicants request relief from this provision pursuant to sections 69(c) and 23(c) to the extent that it would prohibit the imposition of an EWC on tendered shares that have been held for less than a specified period.

3. Rule 6c–10 under the Act permits open-end funds to impose deferred sales charges, subject to certain conditions. Applicants state that EWCs are functionally equivalent to contingent deferred sales charges (''CDSLs'') that open-end funds may charge under rule 6c–10. Applicants believe that EWCs are necessary for the Distributor to recover distribution costs from Fund shareholders who redeem early. The Funds will comply with rule 6c–10 as if the rule were applicable to them. The Funds also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs. Finally, as permitted under rule 6c–10, any waiver of EWCs will comply with the requirements of rule 22d–1 under the Act.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, 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. Applicants believe that the requested relief meets this standard for the reasons stated above.

5. Section 23(c)(3) provides that the SEC may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicants believe that the requested relief meets this standard. Applicants state that the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistent with the requirements of rule 22d–1 under the Act.

Applicants' Conditions

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

1. The Funds that impose an EWC will comply with rule 6c–10 under the Act as if the rule were applicable to the Funds.

2. The Funds that impose a service fee will comply with Rule 2830(d) of the NASD's Conduct Rules as if the rule were applicable to the Funds.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4917 Filed 2–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23032; 812–10856]

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

February 20, 1998.

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

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 26(a)(2)(D) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain unit investment trusts to deposit trust assets in the custody of foreign banks and securities depositories.

APPLICANTS: Van Kampen American Capital Distributors, Inc. (the ''Sponsor''), and Van Kampen American Capital Equity Opportunity Trust (the ''Trust'').

FILING DATES: The application was filed on November 3, 1997 and amended on February 18, 1998.

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 17, 1998, 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 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120 or Nadya Roytblat, Assistant Director, 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, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. The Sponsor, a wholly-owned indirect subsidiary of Morgan Stanley, Dean Witter, Discover & Co., specializes in the underwriting and distribution of unit investment trusts (''UITs'') and mutual funds. The Sponsor is also a broker-dealer registered under the Securities Exchange Act of 1934.

2. The Trust is registered under the Act and consists of several UITs registered or to be registered under the Securities Act of 1933 (''Series'' or ''Trust Series''). Each Series is created under the laws of the United States pursuant to a trust agreement that will contain information specific to that Trust Series and which will incorporate by reference a master trust indenture (the ''Indenture'') among the Sponsor, a financial institution that is a bank within the meaning of section 2(a)(5) of the Act and that satisfies the criteria of section 26(a) of the Act (the ''Trustee''), an evaluator and a supervisor. Applicants request that any order granted pursuant to the application extend to any future UIT sponsored by the Sponsor or an entity controlled by or under common control with the Sponsor (together with the Trust, the ''Trusts'').

3. Several Series have investment objectives that specify the investment of assets in non-United States securities. To date, the existing Trust Series that invest in foreign securities have been able to deposit those securities in the custody of a foreign branch of a U.S. bank or with the securities clearance and depository facilities operated by Morgan Guaranty Trust Company of New York, in its capacity as operator of the Euroclear System (''Euroclear''), or with Central de Livraison de Valeurs Mobilieres, S.A. (''Cedel''), under an exemptive order granted to the Series' Trustee, the Bank of New York.[1] Applicants currently contemplate creating a Trust Series (the ''EAFE Trust'') that will invest in the twenty companies with the highest dividend yield selected from a subset of the Morgan Stanley Capital International Europe, Australasia, Far East Index. The EAFE Trust will invest in foreign securities traded in several countries (such as Australia, France and New Zealand) that either are not eligible for settlement through Euroclear or Cedel or for which those depositories are not used in the ordinary course of settling transactions in those securities. Applicants therefore request an order to permit the Trust Series to deposit investments, including foreign currencies, for which the primary market is outside the United States and such cash and cash equivalents as necessary to effect the Series' transactions in those investments (collectively, ''Foreign Investments''), with any foreign bank or securities depository that meets the requirements described below.

4. Without the requested relief, purchases of certain foreign securities by the EAFE Trust require that the securities must be physically transported in certificate form for deposit with a foreign branch of a U.S. bank and then retransported and redeposited upon sale. The costs and risks of this process are borne by the Series. Applicants also represent that, increasingly, transactions in foreign securities must be settled by book entry through specified clearing systems with related depositories. In addition, certain countries by law or regulation mandate use of a particular depository as the only means of holding a security. In other markets, maintaining securities outside a depository is not consistent with prevailing custodial practices. In some markets, anticipated time delays, as well as the costs, of maintaining securities with the nearest branch of a qualified U.S. bank have led the Sponsor to determine not to invest in those securities.

[1] Investment Company Act Release Nos. 20444 (August 5, 1994) (notice) and 20521 (August 31, 1994) (order).

Applicants' Legal Analysis

1. Under sections 2(a)(5) and 26(a)(1) of the Act, the trustee of a UIT must be a bank that is subject to regulation by the U.S. government or one of the states. Section 26(a)(2)(D) also requires that the trust indenture provide that the trustee ''shall have possession of all securities and other property in which the funds of the trust are invested * * * and shall segregate and hold the same in trust * * * until distribution thereof to the security holders of the trust.'' Under these provisions, the only foreign entity that qualifies as a UIT custodian is an overseas branch of a U.S. bank.

2. Section 6(c) provides that the SEC may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or any rule or regulation under the Act 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. Rule 17f–5 under the Act governs the custody of assets of registered management investment companies overseas. Applicants seek an order under section 6(c) exempting them and any U.S. bank that acts as Trustee for any Trust Series from section 26(a)(2)(D) of the Act to the extent necessary to permit a Trustee to deposit Foreign Investments with an eligible foreign custodian as that term is defined in rule 17f–5 under the Act (''Eligible Foreign Custodian''). Rule 17f–5 defines Eligible Foreign Custodian to include an entity incorporated or organized under the laws of a foreign country that is (i) a banking institution or trust company regulated as a bank or trust company by the foreign country's government or government agency or a majority-owned direct or indirect subsidiary of a U.S. bank or bank holding company; (ii) a securities depository or clearing agency that acts as a system for the central handling of securities or equivalent book-entries in the country that is regulated by a foreign financial regulatory authority; or (iii) a securities depository or clearing agency that acts as a transnational system for the handling of securities or equivalent book-entries.

4. Under the proposed arrangements, a Trust Series would comply with all of the requirements of rule 17f–5, except

that the Trustee would perform the duties that rule 17f–5 requires to be performed by a ''foreign custody manager.'' Rule 17f–5 defines ''Foreign Custody Manager'' as the board of directors of a management investment company or a person serving as the board's delegate.

5. Under the proposed arrangements, the Sponsor, in determining the composition of the Trust Series' portfolio, will evaluate the risks of a Trust Series' investing in a particular country. In making the foreign investment decisions, the Sponsor may seek and rely on the information and opinion of the Trustee who may have information and experience concerning the financial systems and practices of the particular foreign market. The risks associated with the investment, if material, will be disclosed in the Trust Series' prospectus.

6. Consistent with the requirements of rule 17f–5, the Trustee, as Foreign Custody Manager, will select an Eligible Foreign Custodian after determining that the Series's assets will be subject to reasonable care; that the foreign custody contract will provide reasonable care for the Series' assets; and after establishing a system to monitor the appropriateness of maintaining the Series' assets with the custodian. The Trustee will make these determinations according to the requirements of the rule. The Indenture will contain provisions under which the Trustee agrees to indemnify the Trust Series against the risk of loss of Trust Series assets held in accordance with the foreign custody contract. In addition, the Indenture will contain provisions under which the Trustee agrees to exercise reasonable care, prudence and diligence such as a person having responsibility for the safekeeping of Trust Series assets would exercise, and to be liable to the Trust Series for any loss occurring as a result of the Trustee's failure to do so.

7. Applicants believe the Trustee can fulfill the duties of a Foreign Custody Manager under rule 17f–5 to select a foreign custodian and monitor the foreign custody arrangements. Applicants also assert that the Trustee will have the necessary expertise and generally be in the best position to make the determinations required by the rule. Applicants believe that permitting the use of Eligible Foreign Custodians by Trust Series would result in efficiencies, cost savings and enhanced liquidity of the Series' Foreign Investments.

Applicants' Conditions

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

1. The Indenture will contain provisions under which the Trustee agrees to indemnify the Trust Series against the risk of loss of Trust Series assets held in accordance with the foreign custody contract.

2. The Indenture will contain provisions under which the Trustee agrees to exercise reasonable care, prudence and diligence such as a person having responsibility for the safekeeping of Trust Series assets would exercise, and to be liable to the Trust Series for any loss occurring as a result of the Trustee's failure to do so.

3. The Indenture will contain provisions under which the Trustee agrees to perform all of the duties assigned by rule 17f–5, as now in effect or as it may be amended in the future, to the Foreign Custody Manager. A Trustee's duties under this condition will not be delegated.

4. The Trust Series' prospectus will contain such disclosure regarding foreign securities and foreign custody as is required for management investment companies by Forms N–1A and N–2.

5. The Trustee will maintain and keep current written records regarding the basis for the choice or continued use of each foreign custodian. These records will be preserved for a period of not less than six years from the end of the fiscal year in which the Trust Series was terminated, the first two years in an easily accessible place. The records will be available for inspection at the Trustee's main office during the Trustee's usual business hours, by unitholders and by the SEC or its staff.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4857 Filed 2–25–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39681; International Series Release No. 1120]

List of Foreign Issuers Which Have Submitted Information Under the Exemption Relating to Certain Foreign Securities

February 19, 1998.

Foreign private issuers with total assets in excess of $10,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more reside in the United States, are subject to registration under Section 12(g) of the Securities Exchange Act of 1934 [1] (the ''Act'').[2]

Rule 12g3–2(b) [3] provides an exemption from registration under Section 12(g) of the Act with respect to a foreign private issuer that submits to the Commission, on a current basis, the material required by the Rule. The informational requirements are designed to give investors access to certain information so they have the opportunity to inform themselves about the issuer. The Rule requires the issuer to provide the Commission with information that it has: (1) Made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized; (2) filed or is required to file with a stock exchange on which its securities are traded and that was made public by such exchange; and/or, (3) distributed or is required to distribute to its securities holders.

On October 6, 1983, the Commission revised Rule 12g3–2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on an automated inter-dealer quotation system—including the Nasdaq stock market.[4] The Commission grandfathered indefinitely securities of non-Canadian issuers that were in compliance with the Rule as of October 6, 1983 and quoted on Nasdaq on that date.[5]

When the Commission adopted Rule 12g3–2(b) and other rules [6] relating to foreign securities, it indicated that from time to time it would publish lists showing those foreign issuers that have claimed exemptions from the registration provisions of Section 12(g) of the Act.[7] The purpose of this release is to call to the attention of brokers, dealers and investors, that some form of relatively current information concerning the issuers included in this list is available in the Commission's

[1] 15 U.S.C. 78a et seq.

[2] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements of the Act by reason of having registered securities under the Securities Act of 1933, 15 U.S.C. 77a et seq.

[3] 17 CFR 240.12g3–2(b).

[4] Exchange Act Release No. 20264 (Oct. 6, 1983).

[5] If, however, the securities are delisted from an automated inter-dealer quotation system or if the issuer fails to meet the requirements of the Rule, the grandfather provision will cease to apply. In addition, effective April 1, 1998, the securities of foreign private issuers that claim the Rule 12g3–2(b) exemption will no longer be able to be quoted on the OTC Bulletin Board Service. See Exchange Act Release No. 38456 (March 31, 1997).

[6] Exchange Act Release No. 8066 (Apr. 28, 1967).

[7] Exchange Act Release No. 38235 (Feb. 4, 1997) was the last such list.