

payments of the proceeds of the sale of the Notes to the Branch would be made to this account, and the payments by Issuer or the Branch to the Noteholders would be made from this account by appropriate debits or credits, respectively. The Issuing and Paying Agency Agreement states that the Branch will have exclusive control over the account, and the sole right of withdrawal of funds therefrom. At the moment the proceeds from the sale of the Notes are deposited in the Branch's account at a commercial bank, the Noteholder would have a right of action against BV under his or her security interest in the Deposit and, therefore, the Noteholder's security interest in the Deposit would attach.

7. BV, in connection with the offering of the Notes, would submit to the jurisdiction of any state or federal court in the Borough of Manhattan in the City of New York, and would appoint Issuer as agent to accept any process which may be served in any suit, action, or proceeding brought against BV based upon its obligations to Issuer. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process would be irrevocable until all amounts due and to become due with respect to outstanding Deposits and all outstanding obligations of BV to Issuer have been paid.

#### Applicants' Legal Analysis

1. Without exemptive relief, Issuer may be an investment company, as defined in section 3(a) of the Act. Rule 3a-5 states that a finance subsidiary will not be considered an investment company under section 3(a), provided the subsidiary meets certain requirements. Applicants believe that Issuer would meet the requirements of rule 3a-5, except that the Notes and any other debt securities and non-voting preferred stock which Issuer may issue in the future would not be guaranteed in a technical sense by BV, as required by subparagraphs (a)(1) and (a)(3) of the rule. Instead, BV would provide the functional equivalent of a guarantee. Applicants believe that the entitlement of the Noteholders to receive payment by the Branch of the Deposit corresponding to the Notes in case of failure of Issuer to pay the Notes upon maturity would be the substantial equivalent of a guarantee. Applicants represent that the business and fiscal considerations behind BV's desire to use Issuer as a financing vehicle to sell the Notes in the United States in no way impinge upon the public policy concerns, such as investor protection, that underlie the Act.

#### Applicants' Conditions

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

1. BV will state expressly in the Deposit Agreement that the obligations of the Branch to the Issuer and the Noteholders are BV's own obligations.

2. If the Issuer fails to pay a Note in accordance with its terms, the Deposit Agreement will entitle the Noteholder to receive payment from the Branch. Noteholders will have a direct cause of action against BV in the event of any default in payment of the Notes.

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-21039; File No. 812-9288]

#### Companion Life Insurance Company, et al.

May 3, 1995.

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

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

**APPLICANTS:** Companion Life Insurance Company ("Companion Life"), Companion Life Separate Account C (the "Separate Account") and Mutual of Omaha Investor Services, Inc. ("Mutual of Omaha").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2).

**SUMMARY OF APPLICATION:** An order is sought exempting Applicants and principal underwriters of certain flexible payment deferred variable annuity contracts (the "Policies") to the extent necessary to permit the payment to Companion Life of a mortality and expense risk charge from the assets of the Separate Account under the Policies.

**FILING DATE:** The application was filed on October 17, 1994 and amended and restated on April 4, 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

May 30, 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 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, Companion Life Insurance Company, 401 Theodore Fremd Avenue, Rye, New York 10580-1493.

**FOR FURTHER INFORMATION CONTACT:** Edward P. Macdonald, Staff Attorney, or Wendy Friedlander, Deputy Chief, 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.

#### Applicant's Representations

1. Companion life is a stock life insurance company, incorporated under the laws of the State of New York on June 3, 1949, and engaged in the sale of life insurance and annuity policies in New York State. It is also licensed in New Jersey and Connecticut but does not currently do business in these states. Companion Life, a wholly-owned subsidiary of United of Omaha Life Insurance Company, is the depositor of the Separate Account.

2. The Separate Account was established by Companion Life as a separate investment account, on February 18, 1994, under the laws of the State of New York to serve as the funding medium for the Policies. The Separate Account currently has nine subaccounts (the "Subaccounts") and is registered under the Act as a unit investment trust. Each Subaccount invests in a corresponding portfolio of an underlying management investment company ("Fund"). Each Fund is registered under the Act as an open-end, management investment company and its shares are registered under the Securities Act of 1933.

3. Mutual of Omaha serves as distributor and principal underwriter for the Policies. It is registered with the SEC as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. ("NASD"). Broker-dealers other than Mutual of Omaha may also serve as distributors and principal underwriters of the Policies, to the extent the Policies are sold through alternate distribution channels. Any

such other broker-dealer will be registered under the Securities Exchange Act of 1934 as a broker-dealer and will be a member of the NASD.

4. The Policies may be purchased on a non-tax qualified basis ("Non-Qualified Policies") or they may be purchased and used in connection with retirement plans that qualify for special federal tax treatment under Sections 401, 403, 408 or 457 of the Internal Revenue Code ("Qualified Policies"). The Policies require a minimum initial purchase payment of at least \$5,000, and subsequent purchase payments must be at least \$500. An owner can allocate purchase payments to one or more Subaccounts or to a fixed account option, which is part of Companion Life's general account.

5. An owner can transfer accumulation value from one Subaccount of the Separate Account to another, or from the Separate Account to the fixed account within certain limits. The minimum amount which may be transferred is the lesser of \$500 or the entire Subaccount value. If the Subaccount value remaining after a transfer is less than \$500, Companion Life reserves the right, at its discretion, either to deny the transfer request or to include that amount as part of the transfer. Transfers out of a Subaccount currently may be made as often as the owner wishes, subject to the minimum amount specified above. Companion Life reserves the right to otherwise limit or restrict transfers in the future or to eliminate the transfer privilege. Companion Life also reserves the right to restrict transfers from the Separate Account to the fixed account of amounts previously transferred from the fixed account, for a period of time determined by Companion Life.

6. A death benefit is available under the Policy. If an owner dies prior to age 76, the death benefit will equal the greatest of (a) the accumulation value (without deduction of a withdrawal charge) as of the end of the valuation period during which due proof of death and an election of payout option is received by Companion Life's service office, less any charge for applicable premium taxes; (b) the sum of net purchase payments less partial withdrawals; or (c) in the eighth Policy year and later, the accumulation value as of the most recent 7-year Policy anniversary, less any amounts subsequently withdrawn and less any charge for applicable premium taxes. If any owner dies upon, or after age 76, the death benefit will equal the larger of (a) and (b) above.

7. On the last evaluation date of each Policy year prior to the annuity starting

date and upon a complete surrender, Companion Life deducts from the accumulation value an annual fee of \$30 to reimburse it for administrative expenses relating to the Policies. The fee will be deducted from each Subaccount based on the proportion that the accumulation value in each account bears to the total accumulation value. This charge is guaranteed not to increase for the duration of the Policy. Applicants represent that this charge will be deducted in reliance on Rule 26a-1 under the Act and represents reimbursement only for administrative costs expected to be incurred over the life of the Policy. Companion Life does not anticipate any profit from this charge.

8. Companion Life does not deduct a sales charge at the time of investment. However, a withdrawal charge may be deducted upon surrender or partial withdrawal of purchase payments. A withdrawal charge also may be deducted upon the election of certain annuity options. Withdrawal charges are not deducted upon the payment of a death benefit or, under Qualified Policies, any refund of contributions paid in excess of the owner's deductible amounts. The withdrawal charge equals a specified percentage of the purchase payment withdrawn. The withdrawal charge is calculated by multiplying the percentages specified in the table below by the amount of purchase payments withdrawn. The number of years since the date of the purchase payment being withdrawn will determine the withdrawal charge percentage that will apply to that purchase payment.

Years since receipt of purchase payment	Applicable withdrawal charge percentage
1 .....	7
2 .....	6
3 .....	5
4 .....	4
5 .....	3
6 .....	2
7 .....	1
8 and later .....	0

Each Policy year, up to 10% of all purchase payments, less any prior withdrawals, may be withdrawn without the imposition of the withdrawal charge. Purchase payments surrendered or withdrawn in excess of this 10% amount will be assessed the withdrawal charge.

9. Companion Life does not anticipate that the withdrawal charge will generate sufficient revenues to pay the cost of distributing the Policies. If these charges

are insufficient to cover the expenses of distributing the Policies, the deficiency will be met from the general account assets of Companion Life, which may include amounts derived from the charge for mortality and expense risks.

10. Companion Life deducts a daily administrative charge to compensate it for expenses it incurs in the administration of the Policies and the separate Account. The charge is deducted from the assets of the Separate Account at an annual rate of 0.15%, and is guaranteed not to increase.

Companion Life represents that this charge will be deducted to reliance on Rule 26a-1 under the Act and represents reimbursement only for administrative costs expected to be incurred over the life of the Policy. Companion Policy does not expect to make a profit from this charge.

11. Companion Life imposes an annual charge of 1.25% on the net assets of the Separate Account to compensate it for bearing certain mortality and expense risks in connection with the Policies. Of that amount .95% is attributable to the mortality risk, and .30%<sup>1</sup> is attributable to the expense risk. Companion Life guarantees that this charge will never exceed an annual rate of 1.25%. If the mortality and expense risk charges under the Policies are insufficient to cover actual costs and assumed risks, the loss will be borne by Companion Life. Conversely, if the charge is more than sufficient to cover such costs, any excess will be profit to Companion Life. Companion Life currently anticipates a profit from this charge.

12. The mortality risk borne by Companion Life arises from its contractual obligation to make annuity payments regardless of how long all annuitants or any individual annuitant may live. This undertaking assures that neither an annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the periodic annuity payments that a payee will receive under a Policy. Companion Life also incurs a mortality risk in connection with the death benefit guarantee. There is no extra charge for this guarantee.

13. The expense risk assumed by Companion Life is the risk that its actual administrative costs will exceed the amount recovered from the administrative charge, the transfer fee (if imposed), the processing fee (if imposed) and the annual Policy fee.

14. Companion Life will deduct a charge for premium taxes, currently

<sup>1</sup> Applicants will file an amendment during the notice period to add these numbers.

ranging up to 3.5% on annuity policies issued by insurance companies. In addition, other government units within a state may levy such taxes.

15. Companion Life imposes a \$10 transfer fee to any transfer in excess of 12 per Policy year. Companion Life deducts the transfer fee from the amount transferred. No charge will be imposed on transfers from the fixed account and transfers made in connection with the dollar cost averaging program do not count toward the 12 free transfers per year limit. Applicants represent that this charge will be deducted in reliance on Rule 26a-1 and represents reimbursement only for administrative costs expected to be incurred in processing transfers over the life of the Policies. Companion Life does not anticipate any profit from this charge.

#### **Applicant's Legal Analysis**

1. Section 6(c) of the Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the Act to the extent that it is necessary or appropriate in the public interest and consist with the protection of investors and the purposes fairly intended by the Policy and provisions of the Act. Sections 26(a)(2)(C) and 27(c)(2) of the Act, 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.

2. Applicants request exemptions from Sections 25(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a charge of 1.25% from the assets of the Separate Account to compensate Companion Life for the assumption of mortality and expense risks. Applicants assert that the requested exemptions 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 Act.

3. Applicants request that the relief sought herein also apply to a class consisting of broker-dealers who may, in the future, act as principal underwriters of the Policies. Applicants believe that the terms of the relief requested with respect to future underwriters issuing the Policies are consistent with the standards enumerated in Section 6(c) of

the Act. The requested relief would promote competitiveness in the variable annuity market by eliminating the need for Companion Life to file redundant exemptive applications for each new principal underwriter that distributes the Policies it issues, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair Companion Life's ability to effectively take advantage of business opportunities as they arise and investors would not receive any benefit or additional protection thereby. Indeed, they might be disadvantaged as a result of Companion Life's increased overhead expenses. Thus, Applicants 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 Act.

4. Applicants submit that Companion Life is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of 1.25% on an annual basis under the Policies made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. Companion Life represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, guaranteed annuity rates. Companion Life will maintain at its administrative office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey.

5. Applicants acknowledge that the proceeds of the withdrawal charges may be insufficient to cover all costs relating to the distribution of the Policies. Applicants also acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. Companion Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Policy owners. The basis for such conclusion is set forth in a memorandum which will be maintained

by Companion Life at its administrative offices and will be available to the Commission. Companion Life also represents that the Separate Account will only invest in management investment companies which undertake, in the event any such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company as defined in the Act, formulate and approve any such plan under Rule 12b-1.

#### **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 purposes fairly intended by the Policy and provisions of the Act.

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

**Margaret M. McFarland,**

*Deputy Secretary.*

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[Rel. No. IC-21042; 812-9564]

#### **Janus Investment Fund, et al.; Notice of Application**

May 4, 1995.

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

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

**APPLICANTS:** Janus Investment Fund and Janus Aspen Series (collectively, the "Trusts"), all existing and future series of the foregoing investment companies, Janus Capital Corporation ("Janus Capital"), and any other registered investment companies that now or in the future are advised by Janus Capital or an entity controlling, controlled by, or under common control with Janus Capital.<sup>1</sup>

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) for an exemption from section 12(d)(1)(A)(ii), under sections 6(c) and 17(b) for an exemption from section 17(a), and under rule 17d-1 to permit certain transactions in accordance with section 17(d) and rule 17d-1.

**SUMMARY OF APPLICATION:** Applicants seek an order that would permit certain

<sup>1</sup> All existing investment companies that presently intend to rely on the requested order are named as applicants.