

this standard for the reasons discussed below.

7. Applicants assert that the shareholders will rely on the Adviser's expertise to select one or more Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Select Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain fully subject to section 15(a) of the Act and rule 18f-2 under the Act.

8. Applicants assert that some Subadvisers use a "posted" rate schedule to set their fees. Applicants state that the Adviser may not be able to negotiate below the "posted" fee rates with Subadvisers if each Subadviser's fees are required to be disclosed. Applicants submit that the nondisclosure of the individual Subadvisers' fees is in the best interest of the Select Funds and their shareholders, where the disclosure of such fees would increase costs to shareholders without an offsetting benefit to the Select Funds and their shareholders.

#### Applicants' Conditions

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

1. Before any Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund, as defined in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering shares of the Fund to the public.

2. The Trust will disclose in its prospectus(es) the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers

and to recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Disinterested Trustees, and the nomination of new or additional Disinterested Trustees will be at the discretion of the then existing Disinterested Trustees.

4. The Adviser and the Funds will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Disinterested Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, shareholders will be furnished all information about the new Subadviser that would be contained in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Subadviser. The Trust or the Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a Subadviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, except as modified to permit Aggregate Fee Disclosure.

7. The Adviser will provide general investment advisory services to the Funds, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will: (i) Set each Fund's overall investment strategies, (ii) evaluate, select and recommend Subadvisers to manage all or a part of each Fund's assets, (iii) when appropriate, allocate and reallocate each Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of the Subadvisers, and (v) ensure that the Subadvisers comply with each Fund's investment objectives, policies and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance.

8. No Trustee or officer of the Trust, or director or officer of the Adviser will own, directly or indirectly (other than

through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for: (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. The Trust will include in its registration statement the Aggregate Fee Disclosure.

10. Independent counsel knowledgeable about the Act and the duties of Disinterested Trustees will be engaged to represent the Disinterested Trustees of the Trust. The selection of such counsel will remain within the discretion of the Disinterested Trustees.

11. Shareholders of a Fund will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Fund that have been approved by the shareholders of the Fund.

12. The Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

13. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-29948 Filed 11-25-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25807; File No. 812-12788]

### Kemper Investors Life Insurance Company, et al.; Notice of Application

November 20, 2002.

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

**ACTION:** Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 ("1940 Act") approving certain substitutions of securities.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered unit investment trusts to substitute securities issued by the Scudder Variable Series II's Scudder Growth Portfolio and Scudder Blue Chip Portfolio (the "Scudder Portfolios") for securities issued by the Janus Aspen Series' Janus Growth Portfolio and Janus Growth and Income Portfolio, respectively (the "Janus Portfolios"), currently held by those unit investment trusts.

**APPLICANTS:** Kemper Investors Life Insurance Company ("KILICO") and KILICO Variable Annuity Separate Account (the "KILICO Separate Account"). KILICO is referred to as the "Insurance Company." The KILICO Separate Account is referred to as the "Separate Account."

**FILING DATE:** The Application was filed on February 27, 2002 and an amended Application was filed on November 13, 2002.

**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 should be received by the Commission by 5:30 p.m. on December 20, 2002, 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 Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Applicants: c/o Debra P. Rezabek, Esq., Zurich Life, 1600 McConnor Parkway, Schaumburg, Illinois 60196. Copies to: Joseph R. Fleming, Esq., Dechert, Ten Post Office Square, South, Boston, Massachusetts 02109-4603 and Joan E. Boros, Esq., Jordan Burt LLP, Suite 400 East, 1025 Thomas Jefferson St. NW, Washington, DC 20007.

**FOR FURTHER INFORMATION CONTACT:** Alison Toledo, Senior Counsel, or Lorna MacLeod, Branch Chief, at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW, Washington, DC 20549 (tel. (202) 942-8090).

**Applicants' Representations**

1. KILICO is an Illinois stock life insurance company. KILICO is the depositor and sponsor of the KILICO Separate Account, a separate investment account established under Illinois law.

2. KILICO is a wholly-owned subsidiary of Kemper Corporation, a non-operating holding company. Kemper Corporation is a wholly-owned subsidiary of Zurich Group Holding, which is a wholly-owned subsidiary of Zurich Financial Services.

3. The KILICO Separate Account is registered with the Commission under the 1940 Act as a unit investment trust. The assets of the KILICO Separate Account support certain variable annuity contracts (collectively, "Contracts"). The variable annuity contracts issued by KILICO consist of flexible premium deferred variable annuity contracts and certificates. Two sub-accounts of the KILICO Separate Account each invests exclusively in

shares representing an interest in a separate corresponding portfolio (each, a "Portfolio") of Janus Aspen Series (the "Janus Trust").

4. The variable annuity contracts issued by the Insurance Company are collectively referred to as the "Contracts." All of the Contracts expressly reserve the right of the Insurance Company, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a sub-account. The prospectuses describing the Contracts contain appropriate disclosure of this right.

5. Applicants propose to substitute Shares of each Scudder Portfolio for Shares of the corresponding Janus Portfolio (the "Substitution"). Applicants assert that the Substitution will benefit Contract owners by: (a) Consolidating the assets attributable to the Scudder Portfolio and the Janus Portfolio in a single portfolio, which may simplify the Contracts and allow the Insurance Company to more efficiently oversee the functioning of the underlying Portfolios; and (b) providing Contract owners who have their Contract values currently allocated to the Janus Portfolios with a similar Portfolio that has a lower total expense ratio than the Janus Portfolio. The Insurance Company ceased offering the Janus Portfolios as investment options for the Contracts issued after April 30, 2000.

6. As demonstrated in the chart below, each Scudder Portfolio has, and will continue to have, investment objectives, investment strategies and anticipated risks that are similar in all material respects to those of the corresponding Janus Portfolio:

Current portfolio	Investment objective	New portfolio	Investment objective
Janus Growth Portfolio .....	Seeks long-term growth of capital in a manner consistent with the preservation of capital.	Scudder Growth Portfolio .....	Seeks maximum appreciation of capital.
Janus Growth and Income Portfolio.	Seeks long-term capital growth and current income.	Scudder Blue Chip Portfolio .....	Seeks growth of capital and of income.

7. As demonstrated in the chart below, it is also expected that: (a) The investment management fees with respect to each Scudder Portfolio will be equal to or less than the investment management fees with respect to the each corresponding Janus Portfolio; and

(b) the total expense ratio of each Scudder Portfolio will be less than the total expense ratio of the corresponding Janus Portfolio. The first chart below shows the investment management fees and total expenses of Shares of each Janus Portfolio and the corresponding

Scudder Portfolio, on an audited basis, as of December 31, 2001. The second chart below shows the investment management fees and total expenses of Shares of each Janus Portfolio and the corresponding Scudder Portfolio, on an unaudited basis, as of June 30, 2002.

Portfolio	Advisory fees (as percentage of average daily net as- sets)	Other ex- penses (in percent)	Total ex- penses (as percentage of average daily net assets)
Janus Growth Portfolio .....	0.65	0.01	0.66
Scudder Growth Portfolio .....	0.60	0.03	0.63
Janus Growth and Income Portfolio .....	0.65	0.05	0.70
Scudder Blue Chip Portfolio .....	0.65	0.04	0.69

Portfolio	Advisory fees (as percentage of average daily net as- sets)	Other ex- penses (in percent)	Total ex- penses (as percentage of average daily net assets)
Janus Growth Portfolio .....	0.65	0.02	0.67
Scudder Growth Portfolio .....	0.60	0.05	0.65
Janus Growth and Income Portfolio .....	0.65	0.09	0.74
Scudder Blue Chip Portfolio .....	0.65	0.04	0.69

8. On or about the date of the initial filing of the Application, a supplement to the prospectus for each of the Contracts was filed with the Commission. The supplement describes the Substitution and the proposed timeframe for its completion as well as advises the Contract holders that they may transfer assets from each Janus Portfolio to another investment option available under their Contract without the imposition of any fee, charge, or other penalty that might otherwise be imposed through a date at least thirty (30) days following the date the Substitution is effected (the "Substitution Date"). The supplement was forwarded to those Contract owners who became such prior to May 1, 2000 and have either allocated Contract values to a Janus Portfolio or who maintain the ability to do so (the "Affected Contract Owners"). On or about the time the Commission approves of the amended Application, Affected Contract Owners will be sent a supplement to the relevant Contract prospectus that discloses to such Contract owners that the amended Application has been approved. Together with this disclosure, such Affected Contract Owners who have not previously received a prospectus for the Scudder Portfolios will be sent a prospectus for such Portfolios.

9. Affected Contract Owners will be sent a notice of the Substitution in the form of a Contract prospectus supplement. Confirmation of the Substitution will be mailed to Affected Contract Owners within five (5) days after the Substitution Date.

10. The significant terms of the Substitution described above include:

a. Each Scudder Portfolio will have investment objectives, investment strategies, and anticipated risks that are

similar in all material respects to those of the corresponding Janus Portfolio.

b. The total expenses of each Scudder Portfolio will be the same as or less than those of the corresponding Janus Portfolio, assuming that the assets of each Scudder Portfolio do not decrease significantly from its present asset level.

c. Contract owners may transfer assets from each Scudder Portfolio or Janus Portfolio to another investment option available under their Contract without the imposition of any fee, charge, or other penalty that might otherwise be imposed from the date the initial prospectus supplement relating to the Substitution is filed with the Commission through a date at least thirty (30) days following the Substitution Date.

d. The Substitution will be effected at the net asset value of the respective shares of each Janus Portfolio and the corresponding Scudder Portfolio in conformity with Section 22(c) of the 1940 Act and Rule 22c-1 thereunder, without the imposition of any transfer or similar charge by Applicants, and with no change in the amount of any Contract owner's Contract value or in the dollar value of his or her investment in such Contract.

e. Contract owners will not incur any fees or charges as a result of the Substitution, nor will their rights or KILICO's obligations under the Contracts be altered in any way. KILICO will pay or cause to be paid all costs incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses.

The Substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitution than before the Substitution.

f. Because the Contract owners will, before and after the Substitution transaction, still be invested in the same Separate Account, the Substitution will not be counted as a new investment selection or free transfer in determining the limit, if any, on the total number of Portfolios that Contract owners can select or transfer into during the life of a Contract.

g. The Substitution will not alter in any way the annuity or life benefits, tax benefits or any contractual obligations of Applicants under the Contracts.

h. The Substitution will not result in any tax liability for Contract owners.

i. KILICO will not receive, for three years from the date of the Substitution, any direct or indirect benefits from the Scudder Portfolios, their adviser or underwriter, or from affiliates of the Scudder Portfolios, their adviser or underwriter, in connection with assets attributable to the Contracts affected by the Substitution, at a higher rate than it received from the Janus Portfolios, their adviser or underwriter, or from affiliates of the Janus Portfolios, their adviser or underwriter, including without limitation Rule 12b-1 fees, shareholder service or administrative or other service fees, revenue-sharing or other arrangements. KILICO represents that the Substitution it carries out and its selection of the Scudder Portfolios were not motivated by any financial consideration paid or to be paid to it or to any of its affiliates by either of the Scudder Portfolios, their adviser or underwriter, or by the affiliates of the Scudder Portfolios, their adviser or underwriter.

j. Contract owners may withdraw amounts under the Contracts or terminate their interest in a Contract, under the conditions that currently exist, including payment of any

applicable withdrawal or surrender charge.

k. Contract owners affected by the Substitution will be sent written confirmation of the Substitution that identify the substitutions made on behalf of that Contract owner within five (5) days following the Substitution Date.

#### Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(c) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. Applicants request an order pursuant to Section 26(c) of the 1940 Act approving the Substitution. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protections for which Section 26(c) was designed. Applicants believe the Substitution will benefit Contract owners by: (1) Providing an underlying investment option for subaccounts invested in a Janus Portfolio that is substantially similar in all material aspects to that Janus Portfolio; and (2) providing such Contract owners with and investment option with the same or lower investment management fee and a lower expense ratio than the current investment option.

3. Contract owners who do not want their assets allocated to the Scudder Portfolios would be able to transfer assets to any one of the other subaccounts available under their Contract without charge until thirty days after the Substitution have elapsed.

4. The Insurance Company, on behalf of itself and its Separate Account, represent that the Substitution will not result in any change in the amount of any Contract owner's Contract value or in the dollar value of his or her investment in such Contract, or the annuity or life benefits, tax benefits or any contractual obligation of the Applicants under the Contracts.

Contract owners will not incur any fees, expenses or charges as a result of the proposed transactions. Furthermore, the proposed transactions will not result in any change to the Contract fees and charges currently being paid by existing Contract owners.

5. Applicants will not complete the Substitution as described in the amended Application unless all of the following conditions are met:

a. The Commission will have issued an order approving the Substitution under Section 26(c) of the 1940 Act.

b. Each Affected Contract Owner will have been mailed initial disclosure of the Substitution following the initial filing of this Application (in the form of a supplement to the applicable Contract prospectus) that will describe the terms of the Substitution Contract owners' rights in connection with them and will have been mailed a prospectus with respect to the Scudder Portfolios.

c. Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Contracts allow the substitution of Portfolios as described in this amended Application, and that the transactions can be consummated as described herein under applicable insurance laws and under the various Contracts.

d. Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

#### Conclusion

Applicants assert that, for the reasons summarized above, the requested approval meets the standards set out in Section 26(c) and, therefore, the requested order approving the Substitution should be granted.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-29978 Filed 11-25-02; 8:45 am]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

#### Concentrax, Inc.; Order of Suspension of Trading

November 22, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Concentrax, Inc. ("Concentrax"), because of

questions regarding: the accuracy and adequacy of assertions in press releases by Concentrax, concerning, among other things, the existence, status, and description of agreements announced by Concentrax in its press releases of October 9, 2002, October 23, 2002, and October 31, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, on Friday, November 22, 2002 through 11:59 p.m. EST, on Friday, December 6, 2002.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 02-30097 Filed 11-22-02; 12:50 pm]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46849; File No. SR-Amex-2001-85]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC, Relating to the Amex's Front-Running Rule

November 19, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 15, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule, as amended, change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On February 4, 2002, the Amex filed Amendment No. 1 to the proposal. Amendment No. 1 clarifies the proposal by indicating that the proposal does not change either paragraph (d) of Commentary .03 to Amex Rule 111, "Restrictions on Registered Traders," or Commentary .05 to Amex Rule 950(d). On November 7, 2002, the Amex filed Amendment No. 2 to the proposal. Amendment No. 2 includes an Amex Notice that provides examples and interpretations of the operation of the proposed rule.