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Office of Personnel Management.

James B. King,

*Director.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 21801; International Series Release No. 941; 812-10022]

### Nations Fund Portfolios, Inc., et al.; Notice of Application

March 4, 1996.

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

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

**APPLICANTS:** Nations Fund Portfolios, Inc. ("Nations Fund Portfolios"), Nations Fund, Inc. ("Nations Fund"), NationsBanc Advisors, Inc. ("NationsBanc Advisors"); and Nations Gartmore Investment Management ("Nations Gartmore").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act of an exemption from section 15(a) of the Act.

**SUMMARY OF APPLICATION:** National Westminster Bank plc ("NatWest") has agreed to acquire control of Gartmore plc ("Gartmore"), the parent of Nations Gartmore, the sub-adviser to applicant investment companies (the "Funds"). The change of control of Gartmore will result in the assignment, and thus the termination, of the existing sub-advisory contract between the Funds and Nations Gartmore. The order would permit the implementation, without shareholder approval, of new sub-advisory contracts for a period of up to 120 days following the change in control of Gartmore (but in no event later than September 30, 1996). The order also would permit Nations Gartmore to receive from the Funds fees earned under the new sub-advisory contracts following approval by the Funds' shareholders.

**FILING DATE:** The application was filed on March 4, 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 22, 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 of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037, Attention: Jeremy N. Rubenstein and c/o Morrison & Foerster, 2000 Pennsylvania Avenue, N.W., Washington, D.C. 20006, Attention: Marco E. Adelfio.

**FOR FURTHER INFORMATION CONTACT:** Sarah A. Buescher, Staff Attorney, at (202) 942-0573, 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 is available for a fee at the SEC's Public Reference Branch.

#### Applicant's Representations

1. Nations Fund Portfolios and Nations Fund are open-end, management investment companies registered under the Act. Nations Emerging Markets Fund, Nations Pacific Growth Fund and Nations Global Government Income Fund are series of Nations Fund Portfolio; and Nations International Equity Fund is a series of Nations Fund (the series are referred to collectively as the "Funds"). Each Fund has retained NationsBanc Advisors to act as its investment adviser. NationsBanc Advisors, in turn, has engaged Nations Gartmore to provide the day-to-day management of each Fund's portfolio pursuant to a sub-advisory agreement among NationsBanc Advisors, Nations Gartmore, and the Funds (the "Existing Sub-Advisory Agreements").

2. Nations Gartmore is structured as an equally-owned general partnership between NB Partners, a subsidiary of NationsBank, N.A. ("NationsBank") and Gartmore U.S. Limited ("Gartmore U.S. Ltd."), a wholly-owned subsidiary of Gartmore, a U.K. company.

3. NatWest has agreed to acquire control of Gartmore from Compagnie de Suez and affiliated entities (collectively, "Compagnie de Suez") through a two-part transaction involving (i) the direct

purchase from Compagnie de Suez of its indirect subsidiary Indosuez UK Asset Management Limited ("IUKAM"), which holds 75% of Gartmore's outstanding voting shares (the "Direct Purchase"); and (ii) a tender offer for the remaining portion of Gartmore's shares held by public shareholders (the "Tender Offer").

4. The first part of the acquisition was agreed to in an Agreement for Purchase of Shares dated as of February 26, 1996, between Compagnie de Suez and NatWest ("Direct Purchase Agreement"). Settlement of the transactions provided for under the Direct Purchase Agreement is subject to the satisfaction or waiver of several conditions. Applicants expect that a change in control of Nations Gartmore may occur as early as the end of March. The latest date that all conditions to the Direct Purchase Agreement are required to be satisfied or waived is April 30, 1996.

5. The consummation of the Direct Purchase, which must occur before the consummation of the Tender Offer, will result in a change of control of Gartmore from Compagnie de Suez to NatWest. The change of control of Gartmore will constitute an assignment of the existing sub-advisory agreements within the meaning of section 2(a)(4) of the Act.

6. Applicants seek an exemption to permit the implementation, without formal shareholder approval, of new sub-advisory agreements among the Funds, NationsBanc Advisors, and Nations Gartmore. The requested exemption would cover an interim period of not more than 120 days (the "Interim Period") beginning on the day the Direct Purchase is consummated and continuing through the date new sub-advisory agreements are approved or disapproved by the Funds' shareholders (but in no event later than September 30, 1996). During the Interim Period, that portion of NationsBanc Advisors' advisory fees paid by NationsBanc Advisors to Nations Gartmore for sub-advisory services would be paid into escrow.

7. The sub-advisory agreements among Nations Gartmore, NationsBanc Advisors, and each Fund to be entered into upon consummation of the Direct Purchase (collectively, the "New Sub-Advisory Agreements") are identical to the Existing Sub-Advisory Agreements, except for their effective date and escrow provisions. For each Fund, the fee levels for Sub-advisory services will remain the same as in the Existing Sub-Advisory Agreement. Each Fund Proposes to implement its New sub-Advisory Agreement during the Interim

Period, subject to the conditions contained in the application.

8. In accordance with section 15(c) of the Act,<sup>1</sup> the boards of directors will meet on a date prior to the consummation of the Direct Purchase, and they will receive all information that in the directors' view is reasonably necessary to evaluate the New Sub-Advisory Agreements and to determine whether the agreements would be in the best interests of the respective Funds and their shareholders. Although the specific date of the board meetings has not been finalized, applicants represent that they are taking all actions necessary to hold the meetings in March 1996.

9. Nations Fund Portfolios and Nations Fund intend to mail the necessary proxy materials to Fund shareholders as soon as practicable, and, in any event, in sufficient time to allow for a shareholder vote to approve the New Sub-Advisory Agreements within 120 days from the assignment of the Existing Sub-Advisory Agreements (but in no event later than September 30, 1996).

10. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution as escrow agent. The arrangement would provide that: (a) that portion of NationsBanc Advisors' fees payable by NationsBanc Advisors to Nations Gartmore during the Interim Period under the New Sub-Advisory Agreements would be paid into an interest-bearing escrow account maintained by the escrow agent; (b) the amounts in the escrow account (including interest earned on such paid fees) would be paid to Nations Gartmore only upon approval of Fund shareholders of the New Sub-Advisory Agreements or, in the absence of such approval, to the respective Fund; and (c) the escrow agent would release the moneys only upon receipt of a certificate from an officer of Nations Fund Portfolios and/or Nations Fund stating that the moneys are to be delivered to Nations Gartmore and that the New Sub-Advisory Agreement has received the requisite Fund shareholder vote or, if the moneys are to be delivered to the Funds, that the Interim Period has ended, and the New Sub-Advisory Agreement has not received the requisite Fund shareholder vote.

<sup>1</sup> Section 15(c) provides, in relevant part, that it shall be unlawful for any registered investment company to enter into an investment advisory contract unless the terms of such contract have been approved by the vote of a majority of directors, who are not parties to such contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

Before any certificate is sent, the Boards of Directors of Nations Fund Portfolios and/or Nations Fund would be notified.

#### Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c), exempting them from section 15(a) of the Act to the extent necessary (i) to permit the implementation during the Interim Period, without shareholder approval, of the New Sub-Advisory Agreements and (ii) to permit Nations Gartmore to receive from NationsBanc Advisors all fees earned under each New Sub-Advisory Agreement (which would be the same as all fees that would have been earned under each Existing Sub-Advisory Agreement) implemented during the Interim Period if and to the extent the New Sub-Advisory Agreement is approved by the shareholders of a Fund. The proposed timing of the consummation of the Direct Purchase and Tender Offer may not present an opportunity to secure prior approval of the New Sub-Advisory Agreements by Fund shareholders.

2. Section 15(a) of the Act prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved by a majority of the voting securities of the investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of this assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

3. Upon consummation of the Direct Purchase, Compagnie de Suez will transfer ownership of IUKAM, which holds 75% of the outstanding voting shares of Gartmore, to NatWest; and if sufficient acceptances are received under the Tender Offer, NatWest intends to acquire all of Gartmore's outstanding shares. The Direct Purchase will result in an "assignment" within the meaning of section 2(a)(4) of the Existing Sub-Advisory Agreements, terminating each Existing Agreement according to its terms.

4. Rule 15a-4 provides, in relevant part, that if an investment adviser's investment advisory contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company and if neither the investment adviser nor a controlling person thereof directly or indirectly

receives money or other benefit in connection with the assignment. Applicants cannot rely on rule 15a-4 because of the benefits to Compagnie de Suez, Gartmore U.S. Ltd.'s ultimate parent, arising from the Direct Purchase and Tender Offer.

5. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such 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.

6. Nations Gartmore believes that the requested relief is necessary, as it would permit continuity of investment management to each Fund during the period following the consummation of the Direct Purchase and Tender Offer so that services to the Funds would not be disrupted.

7. Applicants represent that the best interests of the Funds' shareholders would be served if Nations Gartmore receives fees for services during the Interim Period as provided herein. These fees are an important part of Nations Gartmore's total revenue and are important to maintaining its ability to provide services to the Funds. In addition, the fees to be paid during the Interim Period are at the same rate as the fees currently payable by the Funds under the Existing Agreements.

#### Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. The New Sub-Advisory Agreements will have the same terms and conditions as the Existing Sub-Advisory Agreements, except for their effective dates and escrow provisions.

2. That portion of NationsBanc Advisors' fee paid to Nations Gartmore by NationsBanc Advisors during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid (a) to Nations Gartmore in accordance with the New Sub-Advisory Agreement, after the requisite approvals are obtained, or (b) to the respective Fund, in the absence of such approvals.

3. The Funds will hold meetings of shareholders to vote on approval of the New Sub-Advisory Agreements on or before the earlier of the 120th day following the termination of the Existing Sub-Advisory Agreements or September 30, 1996.

4. Nations Gartmore will bear the costs of preparing and filing this application. The Funds will not bear the costs relating to the solicitation of shareholder approval of the Funds' shareholders necessitated by the consummation of the Direct Purchase and Tender Offer.

5. Nations Gartmore will take all appropriate steps so that the scope and quality of sub-advisory services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the respective Boards of Directors, including a majority of the non-interested Boards of Directors members, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, Nations Gartmore will apprise and consult with the Board of Directors of the affected Fund or Funds to assure that they, including a majority of the non-interested Board members, are satisfied that the services provided will not be diminished in scope or quality.

6. The Board of Directors of each Fund, including a majority of non-interested Directors, will have approved the New Sub-Advisory Agreements in accordance with the requirements of section 15(c) of the Act prior to termination of the Existing Sub-Advisory Agreements.

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

*Deputy Secretary.*

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[Rel. No. IC-21800; File No. 812-9922]

### **Zurich Life Insurance Company of America, et al.; Notice of Application**

March 4, 1996.

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

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

**APPLICANTS:** Zurich Life Insurance Company of America ("Zurich Life"), Kemper Investors Life Insurance Company ("KILICO"), Federal Kemper Life Assurance Company ("FKLA"), Zurich Life Variable Annuity Separate Account (the "Account"), and Investors Brokerage Services, Inc. ("IBS").

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

**SUMMARY OF APPLICATION:** Applicants request an order permitting Zurich Life, KILICO and FKLA to deduct mortality and expense risk charges from the assets of certain separate accounts that fund certain individual deferred variable annuity contracts.

**FILING DATE:** The application was filed on December 28, 1995.

**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 SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on March 29, 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 reasons for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Frank J. Julian, Esq., Kemper Investors Life Insurance Company, KLIC Legal T-1, 1 Kemper Drive, Long Grove, Illinois, 60049.

**FOR FURTHER INFORMATION CONTACT:** Joseph G. Mari, Senior Special Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** 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. Zurich Life, KILICO, and FKLA (collectively referred to as the "Companies") are stock life insurance companies organized under the laws of Illinois. Zurich Life is a wholly-owned subsidiary of Zurich Insurance Company; KILICO is wholly-owned subsidiary of Kemper Financial Corporation ("Kemper"); and FKLA is a wholly-owned subsidiary of Kemper. Zurich Life entered into a definitive agreement to become the majority owner of Kemper, including Kemper's direct and indirect subsidiaries, KILICO and FKLA. Zurich Life is the depositor of the Account.

2. The Account, established by Zurich Life under Illinois law as an insurance company separate account to fund certain variable annuity contracts (the "Account Contracts"), is registered under the 1940 Act as a unit investment

trust. Applicants request that the relief sought herein extend to variable annuity contracts that are materially similar to the Account Contracts ("Future Contracts") (the Account Contracts and the Future Contracts collectively referred to as the "Contracts") and that are offered by the Account.

3. The Companies may establish one or more separate accounts in the future ("Other Accounts") (Other Accounts and the Account are referred to collectively as the "Separate Accounts") to support Future Contracts that are offered through any other broker-dealer that (i) may serve in the future as principal underwriter in respect of certain variable annuity contracts offered by the Companies, (ii) is registered under the Securities Exchange Act of 1934 as a broker-dealer and which is or will be a member of the National Association of Securities Dealers, Inc. (the "NASD"), and (iii) is controlling, controlled by, or under common control with Zurich Life or any other affiliated insurance company (Other Principal Underwriters"). Applicants request that the relief sought herein extend to the Other Accounts.

4. The Account is comprised of 14 sub-accounts each of which invests in the corresponding portfolio or series of a management investment company registered under the 1940 Act. Zurich Life may create new sub-accounts of the Account.

5. IBS, a registered broker-dealer and a member of the NASD, is the principal underwriter of the Account Contracts.

6. The Account Contracts provide retirement payments or other long-term benefits for individuals who qualify for federal income tax advantages available under Sections 401, 403(b), 408 and 457 of the Internal Revenue Code of 1986, as amended ("qualified Account Contracts"), and for individuals desiring such benefits who do not qualify for such tax advantages ("non-qualified Account Contracts"). The Account Contracts will be offered on a flexible payment basis.

7. Applicants state that the minimum initial purchase payment is \$50 for a qualified Account Contract and \$2,500 for a non-qualified Account Contract. The minimum additional purchase payment for a non-qualified Account Contract is \$500. However, when purchase payments are made through a systematic investing program and the annual contribution is not less than \$600, the minimum payment is \$50.

8. Certain charges and fees are assessed under the Account Contracts. Where applicable, the dollar amount of state premium taxes previously paid or payable upon annuitization by Zurich