

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-19760 Filed 8-2-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-22110; 812-10108]

The Lazard Funds, Inc., et al; Notice of Application

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

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

APPLICANTS: The Lazard Funds, Inc. (the "Fund"), and Lazard Freres Asset Management ("Lazard").

RELEVANT ACT SECTION: Order requested under section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit certain investment companies to deposit their uninvested cash balances in a single joint account to be used to enter into short-term investments.

FILING DATES: The application was filed on April 26, 1996, and amended on July 15, 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 August 26, 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 5th Street, N.W., Washington, D.C. 20549. Applicants, 30 Rockefeller Plaza, New York, N.Y. 10020.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942-0581, or Robert A. Robertson, Branch Chief, (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

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.

Applicants' Representations

1. The Fund, a Maryland corporation, is a registered, open-end management investment company currently consisting of twelve portfolios (the "Portfolios"). Lazard, a division of Lazard Freres & Co. LLC, serves as investment adviser to each Portfolio. Applicants request that any relief granted also apply to any future portfolios of the Fund and any future investment companies or portfolios thereof for which Lazard or any entity under common control or controlled by Lazard subsequently serves as investment adviser.

2. State Street Bank and Trust Company ("State Street") provides administrative services to each Portfolio and serves as each Portfolio's custodian.

3. Lazard has discretion to purchase and sell securities for the Portfolios in accordance with each Portfolio's investment objectives, management policies and investment restrictions. All Portfolios currently are authorized by their investment policies and limitations to invest at least a portion of their uninvested cash balances in short-term liquid investments, including short term money market instruments with overnight, over-the-weekend or over-the-holiday maturities ("Short Term Money Market Instruments")¹ and repurchase agreements.

4. Applicants expect that at the end of each trading day, some or all of the Portfolios will have uninvested cash balances in their custodian accounts that otherwise would not be invested in portfolio securities by Lazard. Generally, such cash balances are invested separately on behalf of each Portfolio in individual repurchase agreements. The Portfolios' uninvested cash balances typically are not invested in Short Term Money Market Instruments because such investments ordinarily cannot be made on a cost-efficient basis given the relatively small size of each Portfolio's cash balance.

5. Applicants propose to deposit some or all of the Portfolios' uninvested cash balances remaining at the end of each trading day into a single joint account, the daily balance of which would be invested in: (a) repurchase agreements "collateralized fully," as defined in rule 2a-7 under the Act; and (b) Short Term Money Market Instruments which constitute "Eligible Securities" within

¹ Such instruments may include Treasury bills, United States government agency certificates, Euro CDs, overnight commercial paper, term bank deposits, certificates of deposit and bankers' acceptances of United States banks.

the meaning of rule 2a-7 under the Act. The Portfolios that are eligible to participate in the joint account and that elect to participate in such account are collectively referred to as "Participants."

6. Applicants propose that Lazard be responsible for negotiating the terms of these transactions in accordance with the investment objectives, management policies and investment restrictions of each Participant. Except insofar as it is an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Participants, Lazard will have no monetary participation in the joint account, but will be responsible for investing assets in the joint account, establishing accounting and control procedures, and ensuring the equal treatment of each Participant.

7. Each Portfolio has established certain systems and standards relating to repurchase agreements. These standards include quality standards for issuers of repurchase agreements and requirements that the repurchase agreements will be fully collateralized at all times. Any joint repurchase agreement transaction will be effected in accordance with Investment Company Act Release No. 13005 (February 2, 1983) and with any other existing and future positions taken by the SEC. In the event that the SEC sets forth guidelines with respect to any type of Short Term Money Market Instrument, all such investments made through the joint account will comply with those guidelines.

8. A Participant's decision to invest in the joint account will be solely at its option; a Participant will not be required either to invest a minimum amount or to maintain a minimum balance in the joint account.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 thereunder prohibit an affiliated person of a registered investment company from participating in any joint enterprise or arrangement in which such investment company is a participant, without an SEC order.

2. The Participants, by participating in the proposed joint account, and Lazard, by managing the proposed joint account, could be deemed to be "joint participants" in a transaction within the meaning of section 17(d). In addition, the proposed joint account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d-1.

3. Although Lazard might gain some benefit through administrative convenience and some possible reduction in clerical costs, the

participating Portfolios and their shareholders will be the primary beneficiaries of the joint account because the joint account may earn higher returns and result in lower transaction costs for the Portfolios, and would be a more efficient means of administering the Portfolios' daily investment transactions.

4. Applicants believe that a Portfolio will never be in a less favorable position than if the joint account were not in place. The assets of a Participant held in the joint account will not be subject to the claims of creditors of other Participants.

5. Participants may earn a higher rate of return on investments through the joint account relative to the returns they could earn individually. Under most market conditions, it is generally possible to negotiate a rate of return on larger repurchase agreements and Short Term Money Market Instruments that is higher than the rate available on smaller repurchase agreements and Short Term Money Market Instruments. The joint account also may increase the number of dealers willing to enter into short-term investment transactions with the participating Portfolios and may reduce the possibility that their cash balances remain uninvested.

6. The joint account may result in certain administrative efficiencies. In addition, by reducing the number of trade tickets which would have to be written, transactions would be simplified, with concomitant reduction of the potential for errors. For the reasons set forth above, applicants believe that granting the requested order is consistent with the provisions, policies, and purposes of the Act and the intention of rule 17d-1.

Applicants' Conditions

Applicants will comply with the following as conditions to any order granted by the SEC:

1. A separate custodial cash account will be established with the State Street for the joint account into which each Portfolio will be permitted to have deposited daily some or all of its uninvested net cash balances after the conclusion of its daily trading activity. (If in the future any Portfolio has a custodian other than State Street at which the joint account will be maintained, such Portfolio will appoint such other custodian as a sub-custodian for the limited purpose of receiving cash for deposit into the joint account.) The joint account will not be distinguishable from any other accounts maintained by any Portfolio with State Street, except that monies of the Portfolios will be deposited on a commingled basis. The

joint account will not have a separate existence and will not have any indicia of a separate legal entity. The sole function of the joint account will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by each Portfolio of its uninvested cash balances.

2. Cash in the joint account will be invested in one or more of the following, as directed by Lazard: (a) repurchase agreements "collateralized fully," as defined in rule 2a-7 under the Act; and (b) Short Term Money Market Instruments which constitute "Eligible Securities" within the meaning of rule 2a-7 under the Act.

3. Each Participant's funds in the joint account will be invested consistent with that Participant's investment objective(s), management policies and investment restrictions. Not every Participant in the joint account necessarily will have its cash invested in every repurchase agreement entered into and/or Short Term Money Market Instrument purchased through the joint account. However, to the extent a Participant's funds are applied to a particular investment made through the joint account, the Participant will participate in and own a proportionate share of such investment and the income earned or accrued thereon, based upon the percentage of such investment purchased with such Participant's funds.

4. Lazard and State Street will maintain records (in conformity with section 31 of the Act and the rules and regulations thereunder) documenting, for any given day, each Participant's aggregate investment in the joint account and its *pro rata* share of each investment made through the joint account.

5. The securities subject to the repurchase agreement will be transferred to the custodial joint account. The securities will not be held by the repurchase agreement counterparty or by an affiliated person of that counterparty.

6. All investments held by the joint account will be valued on an amortized cost basis.

7. To ensure that there will be no opportunity for one Participant, no Portfolio will be allowed to create a negative balance in the joint account for any reason, although it will be permitted to draw down its entire balance at any time. Each Portfolio's decision to invest in the joint account will be solely at its options, and no Portfolio will be obligated either to invest in the joint account or to maintain any minimum balance in the

joint account. In addition, each Participant will retain the sole rights of ownership to any of its assets invested in the joint account, including interest payable on such assets invested in the joint account.

8. Lazard will administer the investment of the cash balance in and operation of the joint account as part of its duties under its existing or any future investment management agreements with the Portfolios. Lazard will not collect any additional or separate fee for managing the joint account.

9. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g-1 thereunder.

10. The Fund's Board will adopt procedures for each of the Portfolios pursuant to which the joint account will operate, which will be reasonably designed to provide that the requirements of this application will be met. The Fund's Board members will make and approve changes they deem necessary to ensure that such procedures are followed. In addition, the Fund's Board members will determine, no less frequently than annually, that the joint account has been operated in accordance with such procedures and will only permit a Portfolio to continue to participate therein if it determines that there is a reasonable likelihood that the Portfolio and its shareholders will benefit from the Portfolio's continued participation.

11. Each Portfolio that values its assets in reliance upon rule 2a-7 under the act will use the average maturity of the instrument(s) in the joint account (determined on a dollar weighted basis) for the purpose of computing that Portfolio's average Portfolio maturity with respect to the portion of its assets held in the joint account on that day.

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

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The Pilot Funds, et al.; Notice of Application

July 30, 1996.

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

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