

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23480; 812-11186]

**Sanford C. Bernstein Fund, Inc. et al.;
Notice of Application**

October 6, 1998.

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

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order under section 17(b) of the Act in connection with a proposed division of the International Value Portfolio (the "Existing Portfolio") of Sanford C. Bernstein Fund, Inc. (the "Fund") into two separate portfolios.

APPLICANTS: The Fund and Sanford C. Bernstein & Co., Inc. (the "Adviser").

FILING DATES: The application was filed on June 22, 1998. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

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 Commission's Secretary 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 October 27, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 767 Fifth Avenue, New York, New York 10153.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942-0527, or George J. Zornada, Branch Chief, at (202) 942-0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete applications may be obtained for a fee at the Commission's Public Reference Branch,

450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942-8090).

Applicant's Representations

1. The Fund is organized as a Maryland corporation and is registered under the Act as an open-end management investment company. The Fund currently offers eleven series, including the Existing Portfolio. The investment objective of the Existing Portfolio is to seek long-term capital growth on a total return basis. The Adviser is an investment adviser registered under the Investment Advisers Act of 1940. The Adviser is the investment adviser to the Existing Portfolio.

2. Applicants propose that the Existing Portfolio be divided into two separate portfolios, designed to accommodate the needs of two distinct categories of investors. After the division, the Existing Portfolio will be managed in a tax-efficient manner and directed toward taxable shareholders ("Taxable Shareholders"). A newly formed series of the Fund ("New Portfolio") will be managed without regard to tax consequences and directed toward shareholders not subject to federal income taxation ("Tax-Exempt Shareholders").

3. The division of the Existing Portfolio will be accomplished by offering each Tax-Exempt Shareholder an opportunity to redeem its shares of the Existing Portfolio in-kind and invest the assets received in the New Portfolio (the "Transaction").¹ To avoid the cost and inconvenience of the physical transfer of securities and other assets to and from the Tax-Exempt Shareholders, the redemption and reinvestment transactions will be "collapsed" so that assets will be transferred directly from the Existing Portfolio to the New Portfolio. The applicants state that, in practical effect, the Transaction will not result in tax consequences for any shareholders.

4. The securities to be transferred to the New Portfolio will be valued in a manner identical to the Existing Portfolio's valuation practices and the shares of the New Portfolio issued to the Tax-Exempt Shareholders will have an aggregate net asset value equal to the value of the assets so transferred. Shares of the New Portfolio will be credited to each Tax-Exempt Shareholder, pro rata, according to the Tax-Exempt Shareholder's interest in the Existing

Portfolio immediately prior to the Transaction. No brokerage commission, fee (except customary transfer fees) or remuneration will be paid in connection with the Transaction.

5. In considering the Transaction, the Fund's board of directors (the "Board"), including a majority of the directors who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("Independent Directors"), determined that the Transaction would be in the best interests of both Tax-Exempt and Taxable Shareholders and would not dilute the interests of shareholders. In making its determination, the Board considered the anticipated benefits of separately managing the Portfolios for the benefit of these two categories of shareholders. The Board, including the Independent Directors, also considered that, although a modest increase in the expense ratios with respect to each of the Existing and New Portfolios might be expected, the Adviser anticipates that the expected increase in return would more than offset the increase in the expense ratio with respect to each Portfolio.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company, or to purchase from such registered investment company any security or other property (except securities of which the seller is the issuer). Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include any person owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; any person controlling, controlled by, or under common control with, the other person; and, if the other person is an investment company, any investment adviser of the investment company.

2. Applicants state that the Existing Portfolio and New Portfolio might be viewed as being under the common control of the Adviser, and thus affiliated persons of each other. Applicants further state that to the extent that the redemptions in-kind from the Existing Portfolio coupled with the investment in the New Portfolio (collectively, the "Transfer") may be deemed to constitute an indirect purchase and sale of securities between the Portfolios, the Transfer would be prohibited by section 17(a). In addition, to the extent that the redemption in-kind ("Redemption") may be deemed to

¹ Tax-Exempt Shareholders not choosing to invest in the New Portfolio could remain in the Existing Portfolio or redeem their shares of the Existing Portfolio at any time in accordance with the redemption procedures set out in the Funds prospectus and statement of additional information.

involve the "purchase" of portfolio securities by any shareholder that owns more than 5% of the Existing Portfolio's outstanding voting securities ("Covered Shareholder") that may exist at the time of the Transaction, section 17(a) would prohibit the Redemption.

3. Rule 17a-7 under the Act exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the security. Applicants state that the relief provided by rule 17a-7 is not available for the Transfer because it will not be effected in cash. Moreover, rule 17a-7(b) requires that the securities being sold be valued at the "last sale price or the average of the highest current independent bid and lowest current independent offer." The Existing Portfolio's valuation procedures provide that securities are priced at the last sale price or, if that is not available, the current bid price of the securities.

4. Rule 17a-8 exempts certain mergers, consolidations, and asset sales of registered investment companies from the provisions of section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the board of directors of each affiliated investment company make certain determinations that the transaction is fair. Applicants state that the relief provided by the rule 17a-8 is unavailable for the Transfer because the Transfer is not structured as a merger, consolidation or asset sale.

5. Section 17(b) provides that the Commission shall exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching, the proposed transaction is consistent with the policy of reach registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants request relief under section 17(b) to allow (a) the Redemption of the Covered Shareholders, and (b) the Transfer.

6. Applicants submit that the terms of the proposed Redemption by a Covered Shareholder meet the standards set forth in section 17(b). Applicants state that the Covered Shareholders will not have a choice as to the type of assets to be received in the Redemption, and neither

the Adviser nor a Covered Shareholder will have any opportunity to select the specific portfolio securities to be distributed in a manner that will benefit Covered Shareholders or be detrimental to the interests of other shareholders. In addition, the Fund will use an objective, verifiable standard to value the securities to be distributed pursuant to the Redemption.

7. Applicants state that the Board has approved the Transaction in the manner required by rule 17a-8. Applicants also state that the Transfer will comply with rule 17a-7 to the extent possible.

Applicants assert that if the Transfer were effected in cash, as required under rule 17a-7(a), rather than in-kind, the Tax-Exempt Shareholders would bear unnecessary expense and inconvenience in transferring securities to the New Portfolio. The Existing Portfolio would also incur brokerage expenses on the sale of portfolio securities. The New Portfolio also would incur brokerage expenses on the subsequent purchase of similar securities. Applicants state that the securities involved in the Transfer will be valued in a manner identical to the Existing Portfolio's valuation practices and that the shares of the New Portfolio issued to the Tax-Exempt Shareholder will have an aggregate net asset value equal to the value of the assets so transferred. Applicants also assert that valuing securities for which a "last sales price" is not available at their bid price, rather than the average of the bid and ask price as required by rule 17a-7, is appropriate. Applicants state that the use of the calculation methodology contained in rule 17a-7(b) could skew the Existing Portfolio's net asset value calculation and result in the relative dilution of interests of either the Taxable or Tax-Exempt Shareholders.

Applicants' Conditions

1. The Transaction will comply with the terms of rule 17a-7, except as described in the Application.

2. The in-kind securities will be distributed by the Existing Portfolio on a *pro rata* basis after excluding: (a) Securities which, if distributed would require registration under the Securities Act of 1933 or violate a restriction with respect to transferability, or other securities not transferable in the manner contemplated in the application; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Fund, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; and (c) certain portfolio assets (such as forward foreign

currency exchange contracts, futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Existing Portfolio's assets represented by cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable as described in the preceding sentence (as well as receivables and prepaid expenses), net of all liabilities (including accounts payable). The Existing Portfolio will also distribute cash in lieu of securities held in its portfolio if distributing the securities would result in the New Portfolio receiving odd lots or fractional shares. In effecting the proposed in-kind redemptions, the Existing Portfolio will round down the proportionate distribution of each portfolio security to the nearest round lot amount and will redeem the remaining odd lot in cash.

3. The in-kind securities distributed to the Tax-Exempt Shareholders will be valued in the same manner as they would be valued for purposes of computing the net asset value of each of the Existing and New Portfolios.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the Transaction occurs, the first two years in an easily accessible place, a written record of such redemptions setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-27417 Filed 10-13-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (63 FR 53969/October 7, 1998).

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: October 5, 1998.

CHANGE IN THE MEETING: Date Change.