

made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participating Insurance Companies will vote shares of each Fund or series thereof held in their registered separate accounts in a manner consistent with timely voting instructions received from such contract owners. Each Participating Insurance Company will vote shares of each Fund or series held in its registered separate accounts for which no timely voting instructions are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their separate accounts investing in a Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote a Fund's shares and to calculate voting privileges in a manner consistent with all other registered separate accounts investing in a Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund. Each Plan will vote as required by applicable law and governing Plan documents.

7. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges for contract owners whose contracts are funded through a registered separate account, the Adviser, or, if applicable, any of its affiliates, will vote shares of any Fund or series thereof in the same proportion as all variable contract owners having voting rights with respect to that Fund or series thereof; provided, however, that the Adviser or any such affiliates shall vote its shares in such other manner as may be required by the Commission or its staff.

8. A Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that (1) shares of the Fund are offered to insurance company separate accounts which fund both annuity and life insurance contracts, and to Qualified Plans, (2) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Fund and the

interests of Qualified Plans investing in the Fund might at some time be in conflict, and (3) the Board will monitor the Fund for any material conflicts and determine what action, if any should be taken.

9. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

10. If and to the extent Rule 6e-2 and Rule 6e-3(T) under the 1940 Act are amended, or Rule 6e-3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then each Fund and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e-2 and Rule 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

11. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Fund), and in particular each Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16(c) of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

12. The Participants shall at least annually submit to the Board of a Fund such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application and said reports, material and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of a Participant (not including an Adviser or affiliate) to

provide these reports, materials, and data to the Board of the Fund when it so reasonably requests, shall be a contractual obligation of all Participants under their agreements governing participation in each Fund.

13. If a Qualified Plan should become an owner of 10% or more of the assets of a Fund, such Plan will execute a participation agreement with such Fund which includes the conditions set forth in the application to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-31891 Filed 11-30-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23571; 812-10868]

Baker, Fentress & Company, et al; Notice of Application

November 24, 1998.

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

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") granting an exemption from section 17(a) of the Act; under section 6(c) granting an exemption from sections 18(d) and 23(a) and (b) of the Act, under section 23(c) of the Act granting an exemption from section 23(c) of the Act; and under section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Baker, Fentress & Company ("BKF") and Levin Management Co., Inc. ("Levco," together with BKF, "applicants") request an order to permit applicants to adopt an equity-based employee compensation plan.

FILING DATES: The application was filed on November 12, 1997 and amended on September 28, 1998.

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 December 21, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Baker, Fentress & Co., Attn. James P. Gorter, Chairman, 200 West Madison Street, Suite 3510, Chicago, Illinois 60606; and Levin Management Co., Inc., Attn. John A. Levin, Chairman, One Rockefeller Center, 25th Floor, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Attorney Adviser, at (202) 942-0574, or Edward P. Macdonald, 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 from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

Applicants' Representations

1. BKF is a non-diversified closed-end management investment company registered under the Act. BKF's common stock is traded on the New York Stock Exchange ("NYSE"). Levco, a Delaware corporation, is a wholly-owned subsidiary of BKF. John A. Levin & Co., Inc. ("Adviser"), a wholly-owned subsidiary of Levco, is an investment adviser registered under the Investment Advisers Act of 1940 and serves as BKF's investment adviser. The Adviser also provides investment advisory services to other clients and has two wholly-owned subsidiaries, one of which is a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"), and the other is a commodity pool operator registered under the Commodity Exchange Act.

2. As an internally managed investment company, BKF has 10 employees. The Adviser and its subsidiaries have 70 employees.

Applicants propose to implement an equity-based employee compensation plan ("Plan") for officers, directors and employees of BKF and the Adviser ("Participants").

3. Applicants state that, in order for BKF and the Adviser to be successful, they must be able to offer their professional staff compensation packages that are comparable to those offered by other investment advisory firms. Applicants assert that top professionals in the investment management business have come to expect to receive equity-based compensation, and that asset management firms offer it generously. Applicants have been advised by an executive compensation consulting firm that BKF and the Adviser will suffer a competitive disadvantage if they are unable to provide equity-based compensation to key executives, portfolio managers, traders, analysts, marketing professionals and other personnel.

4. The Plan has been approved by BKF's board of directors ("Board"), including a majority of the independent directors ("Independent Directors"). The Plan will be submitted to BKF's shareholders for their initial approval and subsequent reapproval five years after the Plan is adopted. The Plan will be administered by a committee of at least two Independent Directors ("Committee"). The Committee will consist exclusively of Independent Directors.

5. Pursuant to the Plan, the Committee will have the discretion to grant both non-qualified and incentive stock options for BKF and Levco common stock,¹ stock appreciation rights ("SARs"),² as well as make various types of grants of BKF and Levco common stock (collectively, "Awards"). The number of shares available for issuance under the Plan would be 10% of BKF's shares outstanding on the effective date of the Plan,³ and 20% of Levco's outstanding shares.

¹ Under the Plan, the exercise price of the stock options would be equal to the fair market value ("FMV") of BKF or Levco stock, as applicable, on the date of grant. The FMV of BKF stock will equal the closing price on the NYSE on the date of grant of the option. The FMV of Levco stock will be the value at which BKF carries the stock for purposes of calculating BKF's net asset value ("NAV").

² Under the Plan, SARs would be granted based on the excess of the FMV of BKF or Levco stock, as relevant, on the date of exercise over the SAR's grant price. Stock issued when an SAR is settled (or, in the case of an SAR settled for cash, stock that would have been issued if the SAR were settled in stock) will be deducted from the number of shares available for issuance under the Plan.

³ That number could be increased (or decreased) in proportion to the changes in the number of BKF's

6. Under the Plan, the Independent Directors would receive only automatic grants of options on BKF's stock. Automatic option grants will be made to each Independent Director (i) on the date of approval of the Plan by BKF's shareholders; (ii) on the effective date of any new Independent Director's initial election to the Board ((i) and (ii) collectively, "Initial Option"); and (iii) annually on the date of final adjournment of each annual meeting of BKF's shareholders ("Annual Option"). Applicants state that this compensation method is designed to assure that director and shareholder interests are aligned.

7. Pursuant to the Plan, options and SARs expire ten years from the date of grant and expire immediately upon termination of employment, unless the Committee determines otherwise. The Awards will be nontransferable except by gift or as permitted by the Committee for estate planning purposes.

8. The Board will review the Plan at least annually. The Committee periodically, but in no event less frequently than annually, and prior to any decision to grant the Awards, will review the potential impact that the grant, exercise, or vesting of the Awards could have on BKF's and Levco's earnings and NAV per share. The Committee will be authorized to take appropriate steps to assure that the grant, exercise or vesting of the Awards would not have an effect contrary to the interests of BKF's shareholders. This authority will include the authority to prevent or limit the grant of additional Awards.

9. Under the Plan, when a Participant exercises an option for Levco stock or otherwise receives Levco stock pursuant to an Award, the Participant may require BKF to repurchase the stock at its then FMV ("Repurchase Right"). The Committee may determine to pay the Participant with BKF's stock and/or cash. The Plan also provides that BKF may make loans to Participants in connection with the Awards, such as to enable a Participant to exercise an option or pay income taxes relating to an Award ("Participant Loans"). The Plan also permits a Participant to pay for an Award with a previous Award, for example, by paying the exercise price for an option on BKF stock with shares of Levco received as a previous Award.

shares outstanding resulting from any stock split or reverse split, stock dividend, recapitalization or similar corporate event, or in connection with stock issuances other than those in connection with the Plan (i.e., dividend reinvestments or an acquisition that is paid for with BKF stock).

Applicants' Legal Analysis

1. Applicants request an order exempting them from various provisions of the Act to implement the Plan. The requested order would supersede a prior order with respect to the incentive compensation plan.⁴

Sections 18(d) and 23(a) and (b) of the Act

2. Section 18(d) of the Act generally prohibits a registered management investment company from issuing rights to purchase the company's shares.⁵ Applicants state that section 18(d) would prohibit the issuance of options and SARs for BKF's stock under the Plan.

3. Section 23(a) of the Act generally prohibits a registered closed-end investment company from issuing securities for services. Applicants state that this provision would prohibit the issuance of Awards for BKF's stock under the Plan as compensation for employees' services.

4. Section 23(b) of the Act prohibits a registered closed-end investment company from selling common stock at below its current NAV. Applicants state that, since BKF's stock historically has traded at a discount to its NAV, and Awards under the Plan will be valued at the current market price of BKF's stock, section 23(b) would prohibit the issuance of the Awards.

5. Section 6(c) of the Act provides, in part, that the SEC may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act, if and to the extent that the 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 request an exemption under section 6(c) from sections 18(d) and 23(a) and (b) of the Act to the extent necessary to implement the Plan.

6. Applicants state that the concerns underlying those sections included (i) preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (ii) complication of the investment company's structure that made it difficult to determine the value of the

company's shares; and (iii) dilution of shareholders' equity in the investment company. Applicants state that the Plan does not raise the concern about preferential treatment of BKF's insiders because the Plan is a bona fide employee compensation plan of the type that is common among corporations generally. BKF also asserts that the Plan would not become a means for insiders to obtain control of BKF because the number of shares of BKF issuable under the Plan would be limited to 10% of BKF's outstanding shares. Moreover, as a condition to the requested order, no individual Participant could be issued more than the 35% of shares reserved for issuance under the Plan.

7. Applicants further state that the Plan will not unduly complicate BKF's structure because equity-based employee compensation arrangements are widely used among corporations and commonly known to investors. Applicants note that the Plan will be submitted to BKF's shareholders for their approval. Applicants represent that a concise, "plain English" description of the Plan, including its potential dilutive effect, will be provided in the proxy materials that will be submitted to BKF's shareholders. Applicants also state that they will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Exchange Act. Applicants further note that the Plan will be disclosed to investors in accordance with the requirements of Form N-2 registration statement for closed-end investment companies, and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. In addition, as a condition to the requested order, BKF will comply with the disclosure requirements for executive compensation plans applicable to operating companies under the Exchange Act. BKF thus concludes that the Plan will be adequately disclosed to investors and appropriately reflected in the market value of BKF's shares.

8. Applicants acknowledge that, while Awards granted under the Plan would have a dilutive effect on the shareholders' equity in BKF, that effect would be outweighed by the anticipated benefits of the Plan to BKF and its shareholders. Applicants assert that they need the flexibility to provide the requested equity-based employee compensation in order to be able to compete effectively with other financial services firms for talented professionals. These professionals, applicants suggest, in turn are likely to increase BKF's and the Adviser's performance and

shareholder value. Applicants also assert that equity-based compensation would more closely align the interests of BKF's and the Adviser's employees with those of BKF's shareholders.

9. In addition, applicants state that BKF's shareholders will be further protected by the conditions to the requested order that assure continuing oversight of the operation of the Plan by BKF's Board. Under these conditions, the Board will review the Plan at least annually. In addition, the Committee periodically will review the potential impact that the grant, exercise, or vesting of Awards could have on BKF's earnings and NAV per share, such review to take place prior to any decisions to grant stock options, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Committee will be authorized to take appropriate steps to ensure that neither the grant nor the exercise or vesting of Awards would have an effect contrary to the interests of BKF's shareholders. This authority will include the authority to prevent or limit the grant of additional Awards.

Section 17(a) of the Act

10. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person ("second-tier affiliate"), acting as principal, from selling any security to the company. Section 2(a)(3) of the Act, in relevant part, defines an affiliated person of another person to include any officer, director or employee of that person and, in the case of an investment company, the investment adviser.

11. Applicants state that officers, directors and employees of BKF are deemed affiliated persons of BKF, and officers, directors and employees of the Adviser are deemed second-tier affiliates of BKF. Thus section 17(a)(1) would prohibit the Repurchase Rights under the Plan (i.e., prohibit BKF from purchasing from a Participant Levco stock received as an Award under the Plan).

12. Section 17(a)(2) of the Act generally prohibits an affiliated person or second-tier affiliate of a registered investment company, acting as principal, from purchasing any security from the company. Applicants state that this provision would prohibit transactions contemplated under the Plan that would enable a Participant to pay for an Award with a prior Award, such as paying the exercise price for an option for BKF's stock with Levco stock received as a prior Award.

⁴ Baker, Fentress & Company, Investment Company Act Release Nos. 21890 (Apr. 15, 1996) (notice) and 21949 (May 10, 1996) (order).

⁵ Section 18(d) permits a fund to issue only warrants or rights, ratably to a class of shareholders, that have an exercise period of no more than 120 days or in exchange for warrants in connection with a reorganization.

13. Section 17(a)(3) of the Act prohibits an affiliated person or second-tier affiliate of a registered investment company from borrowing money or other property from the company. Applicants state that this provision would prohibit Participant Loans.

14. Section 17(b) of the Act provides that the SEC may, by order upon application, exempt a proposed transaction from section 17(a). Section 17(b) further provides that the SEC shall grant the exemption if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of the registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants request an order under sections 6(c) and 17(b) of the Act permitting transactions incident to the Plan described above.

15. Applicants state that valuation of the Awards for purposes of the Repurchase Right and to permit a Participant to pay for an Award with a previous Award will be fair and reasonable and will not involve overreaching on the part of any person concerned because BKF's shares will be valued in accordance with the Act and Levco stock will be valued in the same manner as it is valued for purposes of calculating BKF's NAV. Applicants also state that these transactions will be consistent with BKF's policies and with general purposes of the Act.

16. With regard to Participant Loans, applicants state that the terms of the Loans will be fair to BKF because the Loans will be recourse loans that must be secured by collateral acceptable to the Committee, will bear a rate at least equal to the "applicable federal rate" as defined by the Internal Revenue Code of 1986, as amended ("IRC"), and will have a maturity of less than five years. Applicants also state that, because BKF's fundamental investment restrictions might prohibit Participant Loans, BKF will seek shareholder approval to amend that investment restriction to specifically permit Participant Loans. Applicants also state that the Participant Loans, Repurchase Rights, and the ability to pay for an Award with a previous Award are typical transactions incident to corporate equity-based compensation plans.

Section 17(d) of the Act

17. Section 17(d) of the Act and rule 17d-1 under the Act generally prohibit an affiliated person of a registered investment company or second-tier affiliate from participating in a joint enterprise, joint arrangement or profit-sharing plan in which the company is a participant, unless the SEC by order approves the transactions. Rule 17d-1(c) defines a joint enterprise to include any stock option or stock purchase plan. Rule 17d-1(b) provides that, in considering relief pursuant to the rule, the SEC will consider (i) whether the participation of the registered investment company in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

18. Applicants request an order pursuant to section 17(d) and rule 17d-1 to permit the Plan. Applicants state that the Plan, although benefiting the Participants and BKF in different ways, is in the interests of BKF's shareholders because the Plan will help BKF attract and retain talented professionals, help align the interests of BKF's employees with those of its shareholders, and in turn help produce a better return to BKF's shareholders. Thus, applicants assert that the Plan is consistent with the policies and purposes of the Act and that BKF's participation in the Plan will be on a basis no less advantageous than that of other participants.

Section 23(c) of the Act

19. Section 23(c) of the Act prohibits a registered closed-end investment company from purchasing any securities of which it is the issuer except in the open market, pursuant to tender offers, or under other circumstances as the SEC may permit to insure that the purchase is made on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

20. Applicants state that a purchase by BKF of BKF stock from a Participant in connection with an Award might be prohibited by section 23(c) and request an order under section 23(c) to permit these purchases. Applicants state that these purchases will be made on a basis which does not unfairly discriminate against BKF shareholders because BKF will purchase its shares from the Participants at their market price on the date of the repurchase, the same price at which all other shareholders of BKF could sell their shares on the NYSE.

Applicant's Conditions

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

1. BKF will not dispose of the capital stock of Levco or the Adviser if as a result thereof, BKF would own, directly or indirectly, 50% or less of the outstanding capital stock of each of Levco and the Adviser, unless BKF disposes of 100% of its interest in the Adviser.

2. The Board will maintain Audit, Compensation, and Nominating Committees, none of the members of which will be "interested persons" of BKF as defined in the Act and as modified by the Prior Order. The Committee will administer the Plan and will be composed of two or more directors of BKF who are not interested persons of BKF or Levco and who are (i) non-employee directors within the meaning of rule 16b-3 under the Exchange Act, and (ii) outside directors as defined under section 162(m) of the IRC.

3. The Board will review at least annually the investment management business of BKF and the Adviser to determine whether the benefits derived by BKF warrant the continuation of such business and BKF's ownership, directly or indirectly, of the Adviser and, if appropriate, approve at least annually such continuation.

4. The cash incentive plan covered by the Prior Order will be approved and administered by the Compensation Committee of the Board. No new cash incentive awards will be made under that plan after approval of the Plan by BKF's shareholders.

5. The Plan will not be implemented unless the Plan has been approved by the holders of a majority of BKF's outstanding common stock present at a meeting called to consider the Plan. Any amendment to the Plan will be subject to the approval of BKF's stockholders to the extent such approval is required by law or the Board otherwise determines. Unless terminated or amended, during the fifth year of the Plan (and each fifth year thereafter), the Plan shall be resubmitted for reapproval to BKF's stockholders and the SEC and all Awards made during that year shall be contingent upon stockholder reapproval and receipt of an SEC exemptive order. BKF will not implement the Plan until stockholders have approved a new investment advisory agreement that describes the possible indirect compensation that the Adviser may receive if its officers, director and employees receive Awards.

6. Awards are not transferable or assignable, except as the Committee shall specifically approve to facilitate estate planning or to a beneficiary upon a Participant's death or by will or the laws of descent and distribution.

7. The existence and nature of the Awards granted will be disclosed in accordance with standards or guidelines adopted by the Financial Accounting Standards Board for operating companies and the requirements of the SEC under Item 402 of Regulation S-K, Item 8 of Schedule 14A under the Exchange Act and Item 18 of Form N-2.

8. The maximum number of shares of BKF stock available for delivery in connection with Awards under the Plan shall be (i) 10% of BKF stock outstanding on the effective date of the Plan, plus (ii) 10% of the number of shares of BKF stock issued or delivered by BKF (other than pursuant to compensation plans) during the term of the Plan, subject to adjustment for corporate transactions. The maximum number of shares of Levco stock available for delivery in connection with Awards under the Plan shall be (i) 2,498, plus (ii) 19.99% of the number of shares of the Levco stock issued or delivered by Levco (other than pursuant to compensation plans) during the term of the Plan. The total amount of shares of BKF stock and Levco stock with respect to which incentive stock options may be granted shall not exceed three million and two thousand respectively.

9. The Board will review the Plan at least annually. In addition, the Committee periodically will review the potential impact that the grant, exercise, or vesting of Awards could have on BKF's and Levco's earnings and NAV per share, such review to take place prior to any decisions to grant Awards, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review, and the Committee will be authorized to take appropriate steps to ensure that neither the grant nor the exercise or vesting of Awards would have any effect contrary to the interests of BKF's investors. This authority will include the authority to prevent or limit the grant of additional Awards. All records maintained pursuant to this condition will be subject to examination by the SEC and its staff.

10. Awards are issuable only to BKF's directors, officers and employees and the officers and employees of certain of its subsidiaries. No one person shall be granted Awards relating to more than 35% of the shares reserved for issuance under the Plan. In any fiscal year, no person may be granted Awards related

to more than one million shares of BKF stock and 1,000 shares of Levco stock, which amounts may be adjusted by the Committee as it deems equitable to reflect certain corporate transactions or events that affect the stock of BKF and/or Levco.

11. The maximum amount of BKF stock subject to each Independent Director Initial Option is 1,000, and the maximum number of shares of BKF stock subject to each Independent Director Annual Option is 250, subject to adjustments for corporate transactions. The exercise price per share of BKF stock purchasable upon exercise of a director option will be equal to 100% of the FMV of a share of BKF stock on the date of grant of such option. A director option will expire at the earlier of (i) ten years from the date of grant or (ii) three months after the date the Independent Director ceases to serve as director of BKF for any reason.

12. Any loan made pursuant to the Plan will be required to be made with recourse against the borrower and be secured by the BKF stock and/or Levco stock to be acquired or other acceptable collateral. Furthermore, no loan may have a maturity of more than five years or bear interest at a rate below the "applicable federal rate" as defined in section 1274(d) of the IRC.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-31940 Filed 11-30-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23548; 812-11248]

Bankers Trust Company et al.; Notice of Application

November 24, 1998.

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

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") exempting applicants from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants seeks an order that would permit registered open-end management investment companies to invest their uninvested cash in affiliated money market funds.

APPLICANTS: Bankers Trust Company; Cash Management Portfolio, Treasury Money Portfolio, Tax Free Money Portfolio, NY Tax Free Money Portfolio, International Equity Portfolio, Equity 500 Index Portfolio, Short/Intermediate U.S. Government Securities Portfolio, Asset Management Portfolio, Capital Appreciation Portfolio, Intermediate Tax Free Portfolio, BT Investment Portfolios, BT Institutional Funds, BT Insurance Funds Trust, BT Pyramid Mutual Funds, BT Alex. Brown Cash Reserve Fund, Inc., Flag Investors Communications Fund, Inc., Flag Investors International Fund, Inc., Flag Investors Emerging Growth Fund, Inc., Flag Investors Short-Intermediate Income Fund, Inc., Flag Investors Value Builder Fund, Inc., Flag Investors Real Estate Securities Fund, Inc., and Flag Investors Equity Partners Fund, Inc. (and each of their current series and each subsequently created series), and any other currently existing or subsequently created registered open-end management investment company advised or sub-advised by Bankers Trust Company or an entity controlling, controlled by, or under common control with Bankers Trust Company ("Bankers Trust") (collectively, the "Affiliated Funds").

FILING DATES: The application was filed on August 5, 1998, and amended on November 24, 1998.

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 December 17, 1998, and should be accompanied by proof or 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, NW, Washington, DC 20549. Applicants, One Bankers Trust Plaza, 31st Floor, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, 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 may be obtained for a fee at the SEC's