accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.72(d), so that APS may store spent fuel records for the ISFSI in a single records storage facility which meets the requirements of ANSI N.45.2.9–1974, with the given exception listed in the PVNGS Updated Final Safety Analysis Report Section 1.8, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not necessary.

For further details with respect to this exemption request, see the APS letter dated September 4, 2001. The request for exemption was docketed under 10 CFR Part 72, Docket 72–44. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 20th day of September 2002.

For the Nuclear Regulatory Commission.

**E. William Brach,**

*Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02–24615 Filed 9–26–02; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Pitney Bowes Credit Corporation, 5.75% Notes (Due 2008)) From the New York Stock Exchange, Inc. File No. 1–6661

September 23, 2002.

Pitney Bowes Credit Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 5.75% Notes (Due 2008) (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that is has complied with all applicable laws in effect in the state of Delaware, in which it is incorporated, and with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

The Board of Trustees (''Board'') of the Issuer approved a resolution on August 30, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making the decision to withdraw its Security from the NYSE, the Issuer noted that: (i) There are a limited number of registered holders of the Security; and (ii) delisting and deregistration of the Security will result in significant cost savings for the Issuer.

Any interested person may, on or before October 15, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02–24606 Filed 9–26–02; 8:45 am]

**BILLING CODE 8010–01–M**

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12D2–2(D).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(l).

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–25740; 812–11618]**

### Fidelity Concord Street Trust, et al.; Notice of Application

September 23, 2002.

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

**ACTION:** Notice of application for an order under sections 6(c), 12(d)(1)(J) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for exemptions from sections 12(d)(1), 15(a) and 17(a) of the Act and rule 18f–2 under the Act and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit (a) certain registered open-end investment companies to hire subadvisers and materially amend subadvisory agreements without shareholder approval; (b) the registered investment companies to invest cash collateral (''Cash Collateral'') received in connection with a securities lending program (''Lending Program'') in shares of affiliated registered and private investment companies (''Investment Funds''); and (c) an affiliated entity, acting as securities lending agent (''Agent'') for the registered investment companies to receive fees based on a share of the revenue generated from the securities lending activities.

**APPLICANTS:** Fidelity Concord Street Trust, Fidelity Commonwealth Trust, Variable Insurance Products Fund II (collectively, the ''Companies'') and Fidelity Management & Research Company (''FMR'').

**FILING DATES:** The application was filed on May 19, 1999, and an amendment was filed on September 23, 2002.

**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 October 15, 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 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 20549–0609. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

**FOR FURTHER INFORMATION CONTACT:** John L. Sullivan, Senior Counsel, at (202) 942–0681, or Janet M. Grossnickle, 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 Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

**Applicants' Representations**

1. Each Company is registered under the Act as an open-end management investment company and is organized as a Massachusetts business trust. Each Company offers shares of one or more series (''Funds'') each with its own investment objectives, policies and restrictions. Shares of Variable Insurance Products Fund II are offered solely to insurance company separate accounts, which are used to fund variable annuity contracts and variable life insurance contracts. FMR is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''). Applicants request that the relief extend to any person controlling, controlled by, or is under common control with FMR (an ''Adviser'') and any additional series of the Companies organized in the future and advised by an Adviser (''Future Funds,'' collectively with the Funds, the ''Subadvised Funds''), provided that such Future Funds operate in substantially the same manner as described in the application.[1]

2. The Adviser acts as investment adviser to each Fund under an investment advisory agreement between the Adviser and the Companies on behalf of the Funds (''Advisory Agreement''). The Advisory Agreement was approved by the Companies'' board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in sections 2(a)(19) of the Act (''Independent Trustees'') and by the shareholders of the Funds. Under the terms of the Advisory Agreement, the Adviser provides each Fund with investment research, advice and supervision and administrative services. For its services, the Adviser receives a management fee at an annual rate based on a percentage of the average daily net assets of each Fund.

3. The Advisory Agreements authorize the Adviser to enter into separate subadvisory agreements (''Subadvisory Agreements'') with one or more investment subadvisers (''Subadvisers''). The specific investment decisions for each Subadvised Fund are made by a Subadviser, which has discretionary authority to invest the assets of a particular Subadvised Fund, subject to the general supervision and oversight by the Adviser and the Board.[2] The Adviser retains the responsibility to oversee Subadvisers and to recommend to the Board the hiring, termination and replacement of the Subadvisers. The Adviser selects Subadvisers based on the Adviser's evaluation of the Subadvisers' skills and abilities in managing assets. The Adviser pays the Subadvisers the fees specified in the Subadvisory Agreements out of the fees paid by the Subadvised Funds to the Adviser.

4. In connection with the Lending Program, an Agent will enter into an agreement (''Securities Lending Agreement'') with each Subadvised Fund. Each Subadvised Fund that participates in the Lending Program is referred to as a ''Lending Fund.'' The Securities Lending Agreement will authorize the Agent to enter into agreements (''Borrowing Agreement'') with entities that are designated by the Agent and approved by the Subadvised Fund as eligible to borrow securities (''Borrowers'') to lend them portfolio securities of the Lending Funds. Pursuant to the Borrowing Agreement, the Agent delivers Lending Funds' portfolio securities to Borrowers in exchange for Cash Collateral or other collateral, such as U.S. government securities.

5. The Securities Lending Agreement will authorize and instruct the Agent, as agent for the Subadvised Fund, to invest the Cash Collateral in accordance with specific guidelines or instructions provided by the Subadvised Fund. These guidelines or instructions will identify the particular Investment Funds and other investment vehicles, instruments and accounts, if any, in which cash collateral may be invested, and the maximum and minimum amounts of Cash Collateral that may be invested in the Investment Funds and other authorized investments. For its services as securities lending agent, the Agent will be compensated based on a percentage of the revenue generated by the Subadvised Funds' participation in the Lending Program.[3]

6. Investment Funds will be open-end management investment companies registered under the Act (''Registered Investment Funds''). Investment Funds also may include investment companies that are exempt from registration under the Act in reliance on sections 3(c)(1) or 3(c)(7) of the Act (''Private Investment Funds''). Each Investment Fund will be established for the investment of cash collateral and advised by an Agent serving as the securities lending agent for that Lending Fund, or an entity controlling, controlled by, or under common control with the Agent. The Investment Funds will invest in high quality money market instruments, short-term bonds and such other investments that are consistent with capital preservation and the increased needs of liquidity associated with securities lending transactions.

7. Applicants request relief to permit: (a) The Adviser and the Subadvised Funds to hire Subadvisers and materially amend the Subadvisory Agreements without shareholder approval; (b) the Lending Funds to use Cash Collateral to purchase shares of the Investment Funds and the Investment Funds to redeem shares from the Lending Funds; and (c) an Agent to receive fees based on a share of the revenue generated by the securities lending activities of a Lending Fund.

**Applicants' Legal Analysis**

*A. Relief To Hire Subadvisers and Materially Amend Subadvisory Agreements*

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if 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

[1] Each existing Fund advised by the Adviser that currently intends to rely on the requested order has been named as an applicant. Any Future Fund that relies on the requested order will do so only in accordance with the terms and conditions of the application. Each Adviser will be an investment adviser registered under the Advisers Act or exempt from registration.. Applicants represent that if the name of any Subadvised Fund should, at any time, contain the name of a Subadviser (as defined below), it will also contain the name of the Adviser, which will appear before the name of the Subadviser.

[2] Each Subadviser will be registered or exempt from registration under the Advisers Act.

[3] Deutsche Bank Trust Company Americas (''DBTCA'') currently serves as the Subadvised Funds' lending agent agent in reliance on a prior exemptive order, Bankers Trust Company, Investment Company Act release Nos. 23370 (July 31, 1998) (notice) and 23402 (Aug. 26, 1998) (order). Applicants are requesting relief to participate in a Lending Program with respect to an Agent other than DBTCA.

and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit the Adviser and the Subadvised Funds, subject to approval by the Board, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief would not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Company, the Subadvised Fund or the Adviser, other than by reason of serving as a Subadviser to one or more of the Subadvised Funds (''Affiliated Subadviser'').

3. Applicants assert that investors expect the Adviser and the Board to select one or more Subadvisers for the Subadvised Funds and look to the Adviser when they have questions or concerns about the Subadvised Fund's management or investment performance. Applicants contend that the role of the Subadviser, from the perspective of the investor, is comparable to that of the individual portfolio managers employed by other investment advisory firms. Applicants also contend that requiring shareholder approval of Subadvisory Agreements would impose expenses and unnecessary delays on the Subadvised Funds and could prevent the prompt implementation of actions deemed advisable by the Adviser and the Board. Applicants note that the Advisory Agreements will continue to be fully subject to section 15 of the Act and rule 18f–2 under the Act.

*B. Investment of Cash Collateral by the Lending Funds in the Investment Funds*

1. Section 12(d)(1)(A) of the Act provides, in relevant part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Lending Funds to invest Cash Collateral in the Registered Investment Funds in excess of the limits in sections 12(d)(1)(A) and (B).

3. Applicants represent that the Investment Funds will be designed as vehicles to be used specifically in connection with securities lending transactions. Applicants state that the proposed arrangement will not result in inappropriate layering of either sales charges or investment advisory fees. Shares of the Investment Funds sold to the Lending Funds will not be subject to a sales load, redemption fee, asset-based distribution fee, or service fee. Applicants further state that since investment advisory fees are calculated on the net, rather than the total, assets of the Lending Funds, and since Cash Collateral does not increase net assets, the Lending Funds would not pay duplicative advisory fees with respect to investments made with Cash Collateral. Applicants also state that each Investment Fund will be operated for the purpose of providing the necessary liquidity to satisfy the demands of the Lending Program and, therefore, will not be susceptible to control through the threat of large scale redemptions. Finally, applicants state that an Investment Fund will not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by condition 7 of the conditions regarding participating in a Lending Program below. For these reasons, applicants state that the proposed arrangement will not give rise to the abuses that sections 12(d)(1)(A) and (B) were intended to prevent.

4. Section 17(a) of the Act makes it unlawful for any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person (''second-tier affiliate''), acting as principal, to sell or purchase any security to or from such investment company. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, as well as any person directly or indirectly controlling, controlled by, or under common control with, the other person, and in the case of an investment company, its investment adviser. The Adviser is an affiliated person of each Lending Fund under section 2(a)(3). Because the Lending Funds share a common investment adviser, the Lending Funds may be deemed to be under ''common control'' and therefore affiliated persons of each other. In addition, a Lending Fund could own more than 5% of the outstanding voting securities of an Investment Fund. As a result, each Lending Fund and the Investment Fund may be deemed to be affiliated persons (or second-tier affiliates) of each other Lending Fund. As a result, applicants request relief from section 17(a) under sections 6(c) and 17(b) to permit the sale of shares of the Investment Funds to the Lending Funds and the redemption of the shares by the Lending Funds from the Investment Funds.

5. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if 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, the proposed transaction is consistent with the policy of each registered investment company concerned and the proposed transaction is consistent with the general policy of the Act.

6. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the Lending Funds will be treated like any other shareholders in the Investment Funds, and purchase and sell shares of the Investment Funds on the same terms and on the same basis, including price, as all other shareholders of the Investment Funds. Applicants assert that the proposed transactions comply with each Lending Fund's investment restrictions and policies. Applicants state that Cash Collateral of a Lending Fund that is a money market fund will not be used to acquire shares of any Investment Fund that does not comply with rule 2a–7 under the Act. Applicants further state that the investment of Cash Collateral will comply with all present and future Commission and staff positions concerning securities lending. Applicants also state that the Private Investment Funds will comply with the major substantive provisions of the Act, including the prohibitions against affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any

affiliated person of or principal underwriter for a registered investment company or any second-tier affiliate, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. Rule 17d–1 permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

8. Applicants state that the Lending Funds (by purchasing and redeeming shares of the Investment Funds), a Subadviser (by managing the portfolio securities of the Subadvised Funds while at the same time acting as Agent for the Lending Funds), an Agent (by acting as lending agent, investing Cash Collateral in the Investment Funds, and receiving a portion of the revenue generated by securities lending transactions), and the Investment Funds (by selling shares to and redeeming shares from the Lending Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act. Applicants submit that the proposed investments by the Lending Funds in the Investment Funds meet the standards of rule 17d–1 for the reasons discussed above, particularly that the Lending Funds will invest in the Investment Funds on the same basis as any other shareholder.

*C. Payment of Fees by a Lending Fund to an Agent*

1. As noted above, section 17(d) of the Act and rule 17d–1 under the Act generally prohibit joint transactions involving investment companies and their affiliated persons unless the SEC has approved the transaction. Applicants state that an Agent may serve as a Subadviser for certain series of a particular Company,[4] while other series of that Company could be advised by entities that are not affiliated with the Agent. Each series of the Company could be deemed to be under common control, and thus an affiliated person of each other series. The Agent thus could be deemed an affiliated person of any series for which it acts as Subadviser and a second-tier affiliate of those series for which it does not act as Subadviser. Moreover, an Agent that is a bank may own more than 5% of the voting securities of a Lending Fund in a fiduciary capacity, and thus be an affiliated person of that Lending Fund and a second-tier affiliate of those series of a Company in which it does not own a 5% interest. Further, if a Lending Fund acquired more than 5% of the outstanding voting securities of an Investment Fund advised by the Agent, the Agent could be deemed a second-tier affiliate of the Lending Fund. As a result, the prohibitions of section 17(d) and rule 17d–1 would apply to activities involving the series and the Agent, including the Agent's activities as lending agent and the receipt of a share of the revenue from the series' lending activities. Applicants request relief to permit an Agent acting as lending agent to a Lending Fund to receive a percentage of the revenue generated by the Lending Fund's participation in the Lending Program. Each Agent will have an established securities lending program with numerous other unaffiliated institutional investors participating as lenders in the Agent's program.

2. Applicants propose that each Lending Fund will adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with the Agent will meet the standards of rule 17d–1:

(a) In connection with the approval of the Agent as lending agent for a Lending Fund and implementation of the proposed fee arrangement, a majority of the Board (including a majority of the Independent Trustees) of the Lending Fund will determine (i) the Securities Lending Agreement with the Agent is in the best interests of the Lending Fund and its shareholders; (ii) the services to be performed by the Agent are appropriate for the Lending Fund; (iii) the nature and quality of the services performed by the Agent are at least equal to those provided by others offering the same or similar services for similar compensation; and (iv) the fees for the Agent's services are within the range of, but in any event no higher than, the fees charged by the Agent for services of the same nature and quality provided to unaffiliated parties.

(b) Each Lending Fund's contract with the Agent for lending agent services will be reviewed annually by the Board and will be approved for continuation only if a majority of the Board (including a majority of the Independent Trustees) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of an arrangement whereby the Agent will be compensated as lending agent based on a percentage of the revenue generated by a Lending Fund's participation in the Program, the Board will secure a certificate from the Agent attesting to the factual accuracy of clause (iv) in paragraph (a) above. In addition, the Board will request and evaluate, and the Agent will furnish, such information and materials as the Board, with and upon the advice of agents, consultants, or counsel, determines to be appropriate in making the findings referred to in paragraph (a) above. Such information shall include, in any event, information concerning the fees charged by the Agent to other institutional investors for performing similar services.

(d) The Board, including a majority of the Independent Trustees, will (i) no less frequently than quarterly determine, on the basis of reports submitted by the Agent, that the loan transactions during the proceeding quarter were conducted in compliance with the conditions and procedures set forth in the application; and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application or otherwise followed in connection with lending securities under the Lending Program; and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Lending Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

**Applicants' Conditions**

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

[4] The personnel who will provide day-to-day lending agency services to the Subadvised Funds do not and will not provide investment advisory services to the Subadvised Funds, or participate in any way in the selection of the portfolio securities or other aspects of the management of the Subadvised Funds.

*A. Relief To Enter Into and Materially Amend Subadvisory Agreements*

1. Before a Subadvised Fund may rely on the order requested herein, the operation of the Subadvised Fund in the manner described in the application will be approved by the vote of a majority of its outstanding voting securities (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account) as defined in the Act, or, in the case of a Future Fund whose public shareholders (or variable contract owners through a separate account) purchased shares on the basis of a prospectus containing the disclosure contemplated by condition number 2 below, by the sole initial shareholder(s) before offering shares of that Subadvised Fund to the public (or variable contract owners through a separate account).

2. Each Subadvised Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Subadvised Fund 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 to oversee Subadvisers and recommend their hiring, termination, and replacement.

3. Before relying on the requested Manager of Managers relief, each Subadvised Fund that sought its shareholders' approval to operate in the manner described in the Application prior to the date of the requested order and subsequently sold shares based on a prospectus that does not comply with condition 2 above will provide its shareholders (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, then the unitholders of the sub-account) with at least 30 days prior written notice of (a) the substance and effect of the Manager of Managers relief and (b) the fact that the Subadvised Fund intends to employ the management structure described in the Application.

4. At all times, a majority of each Company's Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

5. The Adviser 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 (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account) of the applicable Subadvised Fund.

6. When a Subadviser change is proposed for a Subadvised Fund with an Affiliated Subadviser, the Board of the corresponding Company, including a majority of the Independent Trustees, will make a separate finding, reflected in the Company's Board minutes, that the change is in the best interests of the Subadvised Fund and its shareholders (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Subadvised Fund and the unitholders of any sub-account) and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Within 90 days of the hiring of any new Subadviser, shareholders (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) will be furnished all information about a new Subadviser that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. Each Subadvised Fund will meet this condition by providing shareholders (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, then by providing unitholders of the sub-account) with an Information Statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A of the Securities Exchange Act of 1934 within 90 days of the hiring of a Subadviser.

8. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of each Subadvised Fund's portfolio, and subject to review and approval by the Board, will (a) set the Subadvised Fund's overall investment strategies; (b) select Subadviser(s); (c) monitor and evaluate the performance of Subadviser(s); (d) ensure that the Subadviser(s) comply with each Subadvised Fund's investment objectives, policies and restrictions; and (e) allocate and, where appropriate, reallocate a Subadvised Fund's assets among its Subadvisers.

9. No trustee, director or officer of a Company or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director or officer) any interest in a Subadviser except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) 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.

*A. Lending Program*

1. The Lending Program of each Lending Fund will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

2. The approval of a Lending Fund's Board, including a majority of the Independent Trustees, will be required for the initial and subsequent approvals of the Agent's service as securities lending agent for the Lending Fund under the Lending Program, for the institution of all procedures relating to the Lending Program as it relates to the Lending Fund, and for any periodic review of loan transactions for which the Agent acted as lending agent under the Lending Program.

3. A majority of a Lending Fund's Board, including a majority of the Independent Trustees, will initially and at least annually thereafter determine that the investment of Cash Collateral in shares of the Investment Funds is in the best interest of shareholders of the Lending Fund.

4. Investment in shares of the Investment Funds will be in accordance with each Lending Fund's respective investment restrictions and will be consistent with each Lending Fund's policies as set forth in its prospectus and statement of additional information. A Lending Fund that complies with rule 2a–7 under the Act will not invest its Cash Collateral in an Investment Fund that does not comply with rule 2a–7 under the Act.

5. Investment in shares of an Investment Fund by a particular Lending Fund will be in accordance with the guidelines regarding investment of Cash Collateral specified by the Lending Fund in the Securities Lending Agreement. A Lending Fund's Cash Collateral will be invested in a particular Investment Fund only if that Investment Fund has been approved for investment by the Lending Fund and if that Investment Fund invests in the types of instruments that the Lending

Fund has authorized for the investment of its Cash Collateral.

6. The shares of the Investment Funds that are sold to and redeemed from the Lending Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers).

7. An Investment Fund will not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act; except to the extent that the Investment Fund (a) receives securities of another investment company as a dividend or as a result of a plan or reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act) or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting the Investment Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes or (ii) lend cash to another fund.

8. A Lending Fund may enter into a Securities Lending Agreement that permits the investment of its cash collateral in a Private Investment Fund only if the Securities Lending Agreement provides that:

(a) Any Private Investment Fund that is operated as a ''money market fund'' (''Private Money Market Fund'') will comply with rule 2a–7 under the Act and will value its shares, as of the close of business on each business day, using the ''amortized cost method,'' as defined in rule 2a–7, to determine the net asset value per share of the Private Money Market Fund. In addition, the Private Money Market Fund will, subject to the approval of the Private Money Market Fund's board of directors or trustees (collectively with the board of directors or trustees of any Private Investment Fund, the ''Trustee''), adopt the monitoring procedures described in rule 2a–7(c)(7) under the Act and the Private Money Market Fund's adviser (collectively with the adviser to any Private Investment Fund, the ''Private Fund Adviser'') will comply with these procedures and take any other actions as are required to be taken pursuant to these procedures. The Lending Funds may only purchase shares of the Private Money Market Fund if the Private Fund Adviser determines on an ongoing basis that the Private Money Market Funds is in compliance with rule 2a–7. The Private Fund Adviser will preserve for a period of not less than six years from the date of determination, the first two years in an easily accessible place, a record of the determination and the basis upon which the determination was made. This record will be subject to examination by the SEC and its staff;

(b) The Private Investment Fund will comply with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Private Investment Fund were a registered open-end investment company;

(c) With respect to all redemption requests made by a Lending Fund, the Private Investment Fund will comply with section 22(e) of the Act;

(d) The Private Fund Adviser shall, subject to the approval by the Trustee, adopt procedures designed to ensure that the Private Fund complies with sections 17(a), (d), (e), 18, and 22(e) of the Act. The Private Fund Adviser also will periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures and will maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be kept pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and its staff;

(e) The net asset value per share with respect to Private Investment Fund shares will be determined separately for each Private Investment Fund by dividing the value of the assets belonging to that Private Investment Fund, less the liabilities of that Private Investment Fund, by the number of shares outstanding with respect to that Private Investment Fund; and

(f) Each Lending Fund will purchase and redeem Private Investment Fund shares as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Private Investment Fund. A separate account will be established in the shareholder records of the Private Investment Fund for the account of each Lending Fund.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 30, 2002:

Closed Meetings will be held on Tuesday, October 1, 2002, at 10 a.m. and Thursday, October 3, 2002, at 10 a.m.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, October 1, 2002 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Formal orders of investigations.

The subject matter of the Closed Meeting scheduled for Thursday, October 3, 2002 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: September 25, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–24755 Filed 9–25–02; 2:37 pm]

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