bring extra copies of their comments and presentation slides, if used, for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Ms. Gouldsberry one week in advance of the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received by the Panel Staff at least one week prior to the meeting date so that the comments may be made available to the Panel for their consideration prior to the meeting. Written comments should be supplied to the DFO at the address/contact information given in this Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format). **Please note:** The Panel operates under the provisions of the Federal Advisory Committee Act, as amended, therefore, all public presentations and written statements will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(d) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. 05–17841 Filed 9–7–05; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27054; 812–12926]

Fifth Third Funds, et al.; Notice of Application

September 1, 2005.

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

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Fifth Third Funds and Variable Insurance Funds (each, a ''Trust,'' and together, the ''Trusts''), and Fifth Third Asset Management Inc. (''FTAM'').

FILING DATES: The application was filed on February 5, 2003, and amended on August 16, 2005.

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 September 27, 2005, and should be accompanied by proof of service on the 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants, c/o Alan G. Priest, Esq., Ropes & Gray LLP, One Metro Center, 700 12th Street, NW., Washington, DC 20005–3948.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, at (202) 551–6874, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (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 Commission's Public Reference Desk, 100 F Street, NE., Washington DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. Each Trust currently offers multiple series (each, a ''Fund''), each with its own investment objectives, restrictions, and policies. Certain of the Funds use or may use the multi-manager structure described below (each, a ''Multi-Manager Fund,'' and together, the ''Multi-Manager Funds''). FTAM is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to all of the Funds.[1] Each Trust, on behalf of its Funds, has entered into an investment advisory agreement with FTAM (each an ''Advisory Agreement'' and collectively, the ''Advisory Agreements''). The Advisory Agreements have been approved by each Trust's board of trustees (each, a ''Board,'' and together, the ''Boards''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trusts (''Independent Trustees''), as well as by each applicable Fund's shareholders.[2]

2. Under the terms of the Advisory Agreements, FTAM oversees each Multi-Manager Fund's investments and may select and contract with one or more sub-advisors (''Sub-Advisors'') to exercise day-to-day investment discretion over all or a portion of the assets of a Multi-Manager Fund pursuant to a separate investment sub-advisory agreement. FTAM monitors and evaluates the Sub-Advisors and recommends to the Board their hiring, retention or termination. Sub-Advisors must be approved by a Multi-Manager Fund's Board and by shareholders, and may be terminated by the Board or the shareholders. Each Sub-Advisor is or will be registered under the Advisers Act. Each Sub-Advisor's fee is paid by FTAM out of the management fee received by FTAM from the Multi-Manager Funds.

3. Applicants request relief to permit FTAM, subject to Board approval, to enter into and materially amend sub-advisory agreements without shareholder approval. The requested relief will not extend to a Sub-Advisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Multi-Manager Fund or FTAM, other than by reason of serving as a Sub-Advisor to one or more of the Multi-Manager Fund (''Affiliated Sub-Advisor'').

[1] Applicants also request that any relief granted pursuant to the application extend to any other existing or future registered open-end management investment company or series therof that: (i) Is advised by FTAM or any entity controlling, controlled by, or under common control with FTAM and (ii) uses the multi-manager structure described in the application (''Future Funds,'' included in the term ''Multi-Manager Funds''). Any Fund or Future Fund that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. The Trusts are the only existing investment companies that currently intend to rely on the order. If the name of any Multi-Manager Fund contains the name of a Sub-Advisor (as defined below), it will be preceded by FTAM's name.

[2] The term ''shareholder'' includes variable life insurance policy and variable annuity contract owners that are unit holders of any separate account for which a series of the Variable Insurance Funds serves as a funding medium.

4. Applicants also request an exemption from the various disclosure provisions described below that may require the Multi-Manager Funds to disclose the fees paid by FTAM to the Sub-Advisors. An exemption is requested to permit a Multi-Manager Fund to disclose (as both a dollar amount and as a percentage of its net assets): (a) The aggregate fees paid to FTAM and any Affiliated Sub-Advisor, and (b) the aggregate fees paid to Sub-Advisors other than Affiliated Sub-Advisors (collectively, ''Aggregate Fees''). If a Multi-Manager Fund employs an Affiliated Sub-Advisor, the Multi-Manager Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Advisor.

Applicants' Legal Analysis

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 under a written contract that has been approved by the vote of a majority 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. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisors.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. 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 and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

7. Applicants assert that by investing in a Multi-Manager Fund, shareholders, in effect, will hire FTAM to manage the Multi-Manager Fund's assets by using its investment advisor selection and monitoring process. Applicants assert that investors will purchase Multi-Manager Fund shares to gain access to FTAM's expertise in these areas. Applicants further assert that the requested relief will reduce Multi-Manager Fund expenses and enable the Multi-Manager Funds to operate more efficiently. Applicants note that the Multi-Manager Funds' Advisory Agreements will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that many Sub-Advisors charge their customers for advisory services according to a ''posted'' fee schedule. Applicants state that while Sub-Advisors are willing to negotiate fees lower than those posted in the rate schedule, particularly with large institutional clients, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Sub-Advisors to negotiate lower advisory fees with FTAM, the benefits of which may be passed on to Multi-Manager Fund shareholders.

Applicants' Conditions

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

1. Before a Multi-Manager Fund may rely on the requested order, the operation of the Multi-Manager Fund in the manner described in the application will be approved by a majority of the Multi-Manager Fund's outstanding voting securities, as defined in the Act, or, in the case of a Multi-Manager Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole shareholder prior to offering shares of the Multi-Manager Fund to the public.

2. Each Multi-Manager Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Multi-Manager Fund will hold itself out to the public as employing the ''manager of managers'' approach described in the application. The prospectus will prominently disclose that FTAM has ultimate responsibility (subject to oversight by the Board) for the investment performance of a Multi-Manager Fund due to its responsibility to oversee Sub-Advisors and recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of any new Sub-Advisor, FTAM will furnish shareholders of the affected Multi-Manager Fund with all of the information about the new Sub-Advisor that would be contained in a proxy statement, except as modified by the order to permit the disclosure of Aggregate Fees. This information will include the disclosure of Aggregate Fees and any change in such disclosure caused by the addition of a new Sub-Advisor. FTAM will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit the disclosure of Aggregate Fees.

4. FTAM will not enter into a sub-advisory agreement with any Affiliated Sub-Advisor without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the Multi-Manager Fund.

5. Each Fund will comply with the fund governance standards as defined in rule 0–1(a)(7) under the Act by the compliance date for the rule. Prior to the compliance date, a majority of each Board will be Independent Trustees and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a change of Sub-Advisor is proposed for a Multi-Manager Fund with an Affiliated Sub-Advisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Multi-Manager Fund and its shareholders and does not involve a conflict of interest from which FTAM or

the Affiliated Sub-Advisor derives an inappropriate advantage.

7. FTAM will provide general management services to each Multi-Manager Fund, and, subject to review and approval by the Board, will: (a) Set each Multi-Manager Fund's overall investment strategies, (b) evaluate, select and recommend Sub-Advisors to manage all or a part of a Multi-Manager Fund's assets, (c) when appropriate, allocate and reallocate the Multi-Manager Fund's assets among multiple Sub-Advisors, (d) monitor and evaluate the Sub-Advisors' investment performance, and (e) implement procedures reasonably designed to ensure that the Sub-Advisors comply with the Multi-Manager Fund's investment objectives, policies and restrictions.

8. No trustee or officer of a Multi-Manager Fund, or director or officer of FTAM will own, directly or indirectly (other than through a pooled investment vehicle over which such person does not have control), any interest in a Sub-Advisor, except for: (a) Ownership of interests in FTAM or any entity that controls, is controlled by, or is under common control with FTAM, 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 Sub-Advisor or an entity that controls, is controlled by, or is under common control with a Sub-Advisor.

9. Each Multi-Manager Fund will disclose in its registration statement the Aggregate Fees.

10. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

11. FTAM will provide the Board, no less frequently than quarterly, with information about FTAM's profitability on a per-Multi-Manager Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Advisor during the applicable quarter.

12. Whenever a Sub-Advisor is hired or terminated, FTAM will provide the Board with information showing the expected impact on FTAM's profitability.

13. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

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

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4886 Filed 9–7–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52367; File No. SR–CBOE–2004–86]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Relating to the Modified ROS Opening Procedure

August 31, 2005.

I. Introduction

On December 15, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to amend the Exchange's Rapid Opening System (''ROS'') [3] modified opening procedure set forth in CBOE Rule 6.2A.03. On July 5, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change was published for comment in the **Federal Register** on July 28, 2005.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Current CBOE Rule 6.2A.03 sets forth certain procedures that modify the normal operation of ROS for index options with respect to which volatility indexes are calculated, to be utilized on the final settlement date (''Settlement Date'') of futures and options contracts that are traded on the applicable volatility index.[6] Specifically, the modified ROS opening procedure provides that on such Settlement Date, all orders, other than contingency orders, are eligible to be placed on the book in those index option contract months whose prices are used to derive the volatility indexes on which options and futures are traded, for the purposes of permitting those orders to participate in the ROS opening price calculation for the applicable index option series.[7]

In setting forth the purpose of the proposed rule change, CBOE cites the example of market participants actively trading futures on the CBOE Volatility Index (''VIX futures''), who have utilized the modified ROS opening procedure to place orders for options on the S&P 500 Index (''SPX'') on the book on the Settlement Date of the VIX futures contract to unwind hedge strategies involving SPX options that were initially entered into upon the purchase or sale of the futures.[8] According to CBOE, to the extent that (i) traders who are liquidating hedges predominately are on one side of the market and (ii) those traders' orders predominate over other orders during the SPX opening on Settlement Date, trades to liquidate hedges may contribute to an order imbalance during the SPX opening on Settlement Date.

CBOE proposes to implement changes to the modified ROS opening procedure to encourage additional participation by market participants who may wish to place off-setting orders against the imbalances. Currently, all orders for participation in the modified procedure must be received by 8:28 a.m. (CT).[9] The proposed rule change would amend Rule 6.2A.03 to require that all index option orders for participation in the modified ROS opening that are related to positions in, or a trading strategy involving, volatility index options or futures, and any changes or cancellations to these orders, be received prior to 8 a.m. (CT).[10] In addition, the proposed rule would require information regarding any order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ROS is the Exchange's automated system for opening certain classes of options at the beginning of the trading day or for re-opening those classes of options during the trading day.

[4] *See* Form 19b–4, dated July 1, 2005 (''Amendment No. 1''). Amendment No. 1 replaced the original filing in its entirety.

[5] *See* Securities Exchange Act Release No. 52101 (July 21, 2005), 70 FR 43726 (''Notice'').

[6] The final settlement date of futures and options contracts on volatility indexes occurs on the Wednesday that is immediately prior to the third Friday of the month that immediately precedes the month in which the options used in the calculation of that index expire.

[7] *See* CBOE Rule 6.2A.03. *See also* Securities Exchange Act Release Nos. 49468 (March 24, 2004), 69 FR 17000 (March 31, 2004); and 49798 (June 3, 2004), 69 FR 32644 (June 10, 2004).

[8] *See* Notice. In particular, CBOE states, the commonly-used hedge for VIX futures involves holding a portfolio of the SPX options that will be used to calculate the settlement value of the VIX futures contract on the Settlement Date. Traders holding hedged VIX futures positions to settlement can be expected to trade out of their SPX options on the Settlement Date. *Id.*

[9] *See* current CBOE Rule 6.2A.03(v).

[10] The proposed rule change includes provisions setting forth generally the criteria by which the Exchange would consider index options orders to be related to positions in, or a trading strategy involving, volatility index options or futures for purposes of the rule. *See* Notice.