

now avoids the word "inapplicable" and focuses on the need for information in instances where the percentage limitation provided in the Consumer Credit Protection Act is replaced by a lower limitation in accordance with state or local law.

OPM emphasizes that the purpose of the form is to elicit as much helpful information as possible from the garnishor so as to facilitate the processing of the garnishment order by agencies of the Federal Government. OPM emphasizes this point in response to one organization's comment that the form should be changed to place the burden of providing applicable law on the garnishee.

While OPM reaches no conclusion concerning what is "common practice" in the collection industry, it is reasonable to assume that the party that brought the garnishment action will be best able to provide the legal basis for the garnishment. OPM would, however, also explain that a failure to cite the correct legal provision in block B.10 (now B.4) should not, by itself, serve as a basis for an agency to refuse to comply with the garnishment order.

One organization suggested that creditors not be asked to provide copies of relevant statutory provisions. While OPM appreciates the organization's concern, OPM believes that it will be helpful for this information to be provided.

One agency recommended that information concerning bankruptcy filings be included. It is OPM's belief that most creditors will comply with the automatic stay provision of the Bankruptcy Code and not attempt to garnish if they have knowledge that a bankruptcy petition has been filed by the employee-obligor.

One of the law firms commented that the form will not solve all of the problems relating to the Federal Government's processing of commercial garnishment orders. OPM does not disagree, but OPM remains hopeful that usage of the form will facilitate the processing of commercial garnishments by the Federal Government.

For copies of this proposal, contact Jim Farron on (202) 418-3208, or E-mail to jmfarron@mail.opm.gov.

**DATES:** Comments on this proposed form should be received on or before August 15, 1996.

**ADDRESSES:** Send or deliver comments to:

Lorraine Lewis, General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415  
and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

**FOR FURTHER INFORMATION CONTACT:** Murray M. Meeker, Senior Attorney, Office of the General Counsel, (202) 606-1701.

U.S. Office of Personnel Management  
Lorraine A. Green,  
*Deputy Director.*

[FR Doc. 96-18019 Filed 7-15-96; 8:45 am]

BILLING CODE 6325-01-M

## POSTAL RATE COMMISSION

### Sunshine Act Meeting

**NAME OF AGENCY:** Postal Rate Commission.

**TIME AND DATE:** 10:00 a.m. on July 23, 1996.

**PLACE:** Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Discuss and vote on the Postal Rate Commission Budget for FY 1997.

**CONTACT PERSON FOR MORE INFORMATION:** Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268-0001, Telephone (202) 789-6840.

Margaret P. Crenshaw,  
*Secretary.*

[FR Doc. 96-18154 Filed 7-12-96; 3:22 pm]

BILLING CODE 7710-FW-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22062; 813-142]

### FMR Corp. and Fidelity Waterway Limited Partnership; Notice of Application

July 10, 1996.

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

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

**APPLICATIONS:** FMR Corp. ("FMR") and Fidelity Waterway Limited Partnership (the "Initial Partnership").

**RELEVANT ACT SECTIONS:** Order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, certain provisions of sections 17 and 30, sections 36 through

53, and the rules and regulations thereunder.

**SUMMARY OF APPLICATION:** Applicants request an order to permit the Initial Partnership, and future partnerships or investment vehicles that may be offered to the same class of investors (the "Subsequent Partnerships") (together with the Initial Partnership, the "Partnerships"), to engage in certain affiliated and joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

**FILING DATES:** The application was filed on May 12, 1995 and amended on December 21, 1995 and June 19, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1996, and should be accompanied by proof of service on the applicant, 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: 82 Devonshire Street, F5H, Boston, Massachusetts 02109.

**FOR FURTHER INFORMATION CONTACT:** Marianne H. Khawly, Staff Attorney, at (202) 942-0562, or Robert A. Robertson, 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 from the SEC's Public Reference Branch.

### Applicants' Representations

1. FMR and its subsidiaries provide investment advisory, management, and shareholder services for the "FMR Funds,"<sup>1</sup> for individual and institutional investors, as well as for pension trusts. FMR and its subsidiaries also offer discount brokerage services to

<sup>1</sup> "FMR Funds" means an investment fund or account organized for the benefit of investors who are not affiliated with the FMR Group (as defined below) and over which an entity within the FMR Group exercises investment discretion. An entity which is either within the FMR Group or an FMR Fund is referred to as an "FMR Affiliate."

retail and institutional clients, manage and develop real estate properties, operate a credit card business, offer variable annuity and life insurance products, and operate and invest in emerging businesses.

2. The Partnerships will be organized by FMR and its affiliates (as defined in rule 12b-2 promulgated under the Securities Exchange Act of 1934 (the "Exchange Act"), excluding the FMR Funds (FMR, together with such included affiliates, the "FMR Group"). The Partnerships are intended to benefit certain current employees, officers, directors, and persons on retainer of the FMR Group (the "Eligible Employees") who, except as described below, are also "accredited investors" meeting the income requirements set forth in rule 501(a)(6) of regulation D under the Securities Act of 1933 (the "Securities Act"),<sup>2</sup> and to be a means of rewarding and retaining those individuals. An entity with the FMR Group will, as a general partner or other manager of each Partnership (a "General Partner"), participate in each Partnership. The Partnerships will enable such personnel to participate in a wide variety of investment opportunities that would not be offered to them as individual investors.

3. The Partnerships will operate as non-diversified, closed-end management investment companies. The Partnerships generally will seek to achieve a high rate of return through long-term capital appreciation by providing expansion capital to a variety of emerging growth companies and by making investments in real estate assets through a venture capital portfolio (the "FMR Investments").

4. Participation in the Partnerships will be limited to Eligible Employees, individuals, and entities that fall within the following categories: (a) Trusts of which the trustees, grantors and/or beneficiaries are Eligible Employees; (b) partnerships, corporations, or other entities all of the voting power of which is controlled by Eligible Employees; and (c) spouses, parents, children, spouses of children, brothers, sisters, and grandchildren ("Eligible Family Members") of Eligible Employees, and trusts established for the benefit of Eligible Family Members ((a), (b), and (c), collectively, "Qualified Participants"). Eligible Employees and their Qualified Participants are referred to as "Eligible Participants."

<sup>2</sup> An Eligible Employee may be determined to be an "accredited investor" under rule 501(a)(6) of regulation D under the Securities Act by reference to income from sources other than from the FMR Group.

5. The purpose of the Initial Partnership is to enable Eligible Employees and persons or entities related to Eligible Employees to receive the benefit of certain FMR Investments. In order to achieve this result, the Eligible Participants have acquired their limited partnership interests in the Initial Partnership without payment therefor by way of a dividend on their stock interests in FMR. Similarly, in the case of any Subsequent Partnership in which the investors will acquire their limited partnership interests without payment therefor by way of a dividend or compensation award from an entity within the FMR Group, the interests will be granted only to those persons and entities that are Eligible Participants. The amount and timing of distribution of limited partnership interests in a Partnership to Eligible Participants will be determined solely by FMR. Because the recipients of a distribution of limited partnership interests will not have discretion over whether or not they receive such distribution of interests, it is possible that certain Eligible Employees who receive such interests may not meet the income requirements set forth in rule 501(a)(6) under regulation D under the Securities Act and, similarly, certain Qualified Participants may not qualify as "accredited investors" under regulation D.<sup>3</sup> FMR Group will endeavor to ensure that no more than 35 Eligible Participants who are not "accredited investors" will receive partnership interests in the Initial Partnership which is distributed by way of a dividend on FMR stock.<sup>4</sup>

6. To date, FMR has acquired limited partnership interests in the Initial Partnership in exchange for capital contributions of real estate interests and

<sup>3</sup> Each such employee who is not an "accredited investor" will have received minimum total compensation, (including any profit shares, whether paid as dividend or other investment income, and bonus) of at least \$150,000 in the year prior to the year in which the interest in the Initial Partnership is distributed to such employee and will have a reasonable expectation of at least the same level of minimum total compensation in each of the two immediately succeeding years. All such employees will have received undergraduate degrees, will have been employed with the FMR Group for at least two years, and will occupy middle to senior level positions. In addition, each such employee will have such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment or FMR will have a reasonable belief immediately prior to such employee becoming a limited partner of a Partnership that such employee falls within the foregoing description.

<sup>4</sup> In the event the number of non-accredited investors would exceed 35 if all stockholders received the partnership interests as a dividend, an appropriate number of non-accredited investors will receive cash instead of partnership interests.

securities representing all or a portion of FMR's interest in certain FMR Investments. FMR has transferred, by way of a dividend on its capital stock, substantially all of its limited partnership interests in the Initial Partnership to Eligible Participants. Those Eligible Participants who acquire limited partnership interests in a Partnership are referred to as "Limited Partners." FMR stockholders who were not Eligible Participants (*i.e.*, charitable organizations) and certain individual stockholders who do not participate for tax reasons (collectively with the charitable organizations, "Excluded Stockholders") received cash in lieu of limited partnership interests in the Initial Partnership. If interests in Subsequent Partnerships are acquired by means of a dividend, Excluded Stockholders will receive cash and all other shareholders will receive partnership interests.<sup>5</sup>

7. Currently, the Initial Partnership is not structured to enable Participants to invest their own funds but may be amended to permit such transactions. Subsequent Partnerships will be identical to the Initial Partnership except that they may provide for participants to invest their own funds.

8. The management and control of each Partnership, including all investment decisions, will be vested exclusively in the General Partner. The General Partner will be under the common control of FMR. Thus, the business and affairs of each Partnership will be managed by or under the direction of the board of directors or other committee serving similar functions (the "Board") of an entity that is under common control with FMR. Each Board will be comprised exclusively of directors and/or officers of the FMR Group, each of whom is expected to qualify as an Eligible Employee.

9. In the case of a Partnership that makes investments with funds provided by the Limited Partners, the General Partner will be responsible primarily for identifying, investigating, and structuring the investments. The General Partner initially will not receive any fees or other compensation for serving as the General Partner of the Initial Partnership. However, Subsequent Partnerships may provide, and the Initial Partnership may be amended to provide, for the General

<sup>5</sup> Until receipt of the requested exemptive order, FMR Corp. may effect transactions similar to that described above with respect to FMR Corp.'s interest in certain FMR Investments, provided that at all times the Initial Partnership will continue to qualify for the exclusion provided in section 3(c)(50)(C) of the Act.

Partner to receive a management or performance-based fee, or "carried interest" based on the gains and losses arising from a Partnership's investments.<sup>6</sup> Any such fee would not exceed those customarily charged for such investment advisory services.

10. Applicants anticipate that a Partnership may own an investment in an entity in which an FMR Affiliate is also invested and the Partnership's investment may be in the same or different securities as the entity's investment. A Partnership's investment may be acquired by the Partnership as a capital contribution from an entity within the FMR Group while the entity continues to hold an investment in the same or different securities of the portfolio company. In the case of a Partnership that makes investments with funds provided by the Limited Partners, an investment in a portfolio company may be purchased by a Partnership: (a) From an entity within the FMR Group while the entity continues to hold an investment in the same or different securities of the portfolio company; (b) concurrently with an investment made in the same or different securities by an entity within the FMR Group; or (c) at a different point in time from an investment held by an entity within the FMR Group in the same or different securities of the portfolio company. All such purchases will meet the requirements of condition 1 below.

11. If a Partnership makes its investment concurrently with an investment in the same securities by an entity within the FMR Group, the economic terms applicable to the Partnership's investment generally will be substantially the same as those applicable to the corresponding investment by the FMR Group entity. It is possible, however, that the FMR Group entity's investment may have more favorable non-economic terms (e.g., the right to representation on the board of directors of the portfolio company) in light of differences in legal structure or regulatory, tax, or other considerations.

12. In addition, a Partnership may co-invest in a portfolio company alongside an FMR Fund.<sup>7</sup> Although the terms

applicable to the investment by the FMR Fund may differ from the terms of the relevant investment held by the Partnership, and the limitations and conditions contained in the application that are applicable to entities within the FMR Group will not apply to the FMR Fund, the entities within the FMR Group will continue to be subject to all of the limitations and conditions contained in the application with respect to the making and disposition of investments by the Partnership.

13. The Partnership will, except as permitted under condition 3 below, be required to be given the opportunity to sell or otherwise dispose of its investments prior to or concurrently with, and on the same terms as, sales or other dispositions of the side-by-side investment of an entity within the FMR Group in the same investment securities.<sup>8</sup>

14. The General Partner and the Limited Partners (collectively, the "Partners") of the Initial Partnership will share in the profits and losses arising from the Initial Partnership's investment activities in proportion to the size of their respective interests in the Initial Partnership. When distributing cash and securities to the Partners, the General Partner will be required to distribute the cash and securities to all Partners in the same proportion, however, the General Partner will have the right to make non-ratable distributions.<sup>9</sup>

15. The Initial Partnership may, in the future, either through the Initial Partnership or a subsidiary partnership established by the Initial Partnership (a "Subpartnership"), acquire additional FMR Investments through: (a) The proceeds of a loan from an entity within the FMR Group made to the Initial Partnership or such Subpartnership; (b)

Partnership's dealings with such investment company is being sought, and each Partnership will continue to be subject to, and to comply with, all of the provisions of the Act that may apply to any such dealings with any such investment company.

<sup>8</sup> "Non-lockstep" dispositions generally would be confined to instances where tax or other regulatory concerns made different disposition strategies advisable. For example, FMR may donate appreciated securities to charity to minimize capital gains taxation. Holders of partnership interests, on the other hand, would pay tax on dispositions by the Partnership. Thus, holders of Partnership interests might prefer to sell the securities in a later negotiated sale or that the securities be distributed in order to choose the timing of recognition of capital gains.

<sup>9</sup> The General Partner's right to make such non-ratable distributions would be confined to the instances in which it is desirable for an individual partner to receive certain types of distributions due to regulatory, tax, or other legal considerations. No non-ratable distribution will be made to any Partner to the extent that such distribution, while beneficial to such Partner, is substantially likely to have a material adverse effect on another Partner.

cash generated by Partnership investments or; (c) capital contributions provided by an entity within the FMR Group. A Subpartnership might be utilized to allow an FMR Group entity and the Initial Partnership to invest together. In the event that the Initial Partnership incurs indebtedness from an entity within the FMR Group to finance such investments, such indebtedness will bear interest on terms no less favorable to the Partnership than would be obtained on an arm's-length basis from an unaffiliated third party.

16. The Partnerships also may, in the future, make loans to FMR. The loans will be on terms no more favorable than would be obtainable by FMR from an unaffiliated third party on an arm's length basis. Such unsecured loans will be fully disclosed to an Eligible Employee prior to the acquisition of limited partnership interests.

17. In addition, the Initial Partnership or a Subpartnership may, in the future, enter into a joint venture or other arrangement with an FMR Group entity (a "Joint Venture"). Such Joint Ventures will be fully disclosed to an Eligible Employee prior to the acquisition of limited partnership interests. Such Joint Ventures will acquire additional FMR Investments or capital contributions provided by such FMR entity and/or the Initial Partnership or Subpartnership. Any entity with the FMR Group that participates with the Initial Partnership in a Joint Venture will be subject to the requirements applicable to a "Co-Investor" under condition 3.

18. During the existence of the Initial Partnership, full and faithful books and accounts will be kept, in which the General Partner will enter, or cause to be entered, all business transacted by the Initial Partnership and all monies received, advanced, paid out, or delivered on behalf of the Initial Partnership, the results of the Initial Partnership's operations, and each Partner's capital. Such books will at all times be accessible to all Partners. In addition, the General Partner will supply to the Limited Partners all information it deems necessary to enable the Limited Partners to prepare their Federal income tax returns.

19. The General Partner will cause a firm of independent certified public accountants to make a determination of the net asset value of the Initial Partnership as of the end of each fiscal year of the Initial Partnership and at any time such value will affect or determine the price at which a specified percentage of interests in the Initial Partnership will be redeemed, sold, or otherwise transferred by any Partner,

<sup>6</sup> A "carried interest" is an allocation to the General Partner of net gains in addition to the amount allocable to the General Partner that is in proportion to its capital contributions. If a "carried interest" is payable to the General Partner, it will be structured to comply with the requirements of rule 205-3 under the Advisers Act.

<sup>7</sup> With respect to any FMR Fund that is an investment company registered under the Act, applicant acknowledges and agrees that, for purposes of the application, no exemption from any provision of the Act that may apply to any

unless such requirement is waived by the parties to the applicable transaction.

20. Subsequent Partnerships may be structured in a manner substantially identical to that of the Initial Partnership described above. However, it is possible that a Subsequent Partnership may have different terms for the purpose of enabling Eligible Participants to invest their own funds through the Partnership in investments that come to the attention of the FMR Group from time to time.

#### Applicants' Legal Analysis

1. Applicants request an exemption under sections 6(b) and 6(e) of the Act from all provisions of the Act, except section 9, sections 17 and 30 (except as described below), sections 36 through 53, and the rules and regulations thereunder that would permit the Partnerships to engage in certain affiliated and joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

2. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer; or by members of the immediate family of such employees, persons on retainer, or former employees. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 6(e) provides that in connection with any order exempting an investment company from section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, acting as principal, to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other such property. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the

policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

4. Applicants request an exemption from section 17(a) of the Act to the extent necessary to: (a) Permit an entity within the FMR Group, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by such Partnership; and (b) permit any Partnership to invest in or engage in any transaction with any entity, acting as principal, (i) in which such Partnership, any company controlled by such Partnership or any FMR Affiliate has invested in or will invest, or (ii) with which such partnership, any company controlled by such Partnership or any FMR Affiliate is or will become otherwise affiliated. The transactions to which any Partnership is a party will be effected only after a determination by the Board that the requirements of condition 1 below have been satisfied.

5. The principal reason for the requested exemption is to ensure that each Partnership will be able to hold investments in companies: (a) In which an FMR Affiliate or its individual employees, officers, or directors may make or have already made an investment, or (b) with which an FMR Affiliate or its individual employees, officers, or directors may engage in transactions.

6. The Partners of each Partnership will have been fully informed of the possible extent of such Partnership's dealings with an FMR Affiliate and, as professionals employed in the securities business, will be able to understand and evaluate the attendant risks. Applicants believe that the community of interest among the Partners of each Partnership, on the one hand, and the FMR Group, on the other hand, is the best safeguard against any risk of abuse.

7. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such company, or a company controlled by such company, is a joint or joint and several participant in contravention of SEC rules. Rule 17d-1 provides that the SEC may approve a transaction subject to section 17(d) after considering whether the participation of such registered company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

8. Applicants request an order in accordance with section 17(d) and rule 17d-1 to the extent necessary to permit

affiliated persons of each Partnership (including without limitation on the General Partner and the investment adviser of such Partnership and other FMR Affiliates), or affiliated persons of any of these persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such Partnership or a company controlled by such Partnership is a participant.

9. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent. The concern that permitting co-investments or joint investments by an FMR Affiliate on the one hand, and a Partnership on the other, might lead to less advantageous treatment of such Partnership should be mitigated by the fact that: (a) The FMR Group will be acutely concerned with its relationship with the personnel who invest in such Partnership; and (b) senior officers and directors of the FMR Group will be investing in such Partnership.

10. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Applicants request an exemption from section 17(f) and rule 17f-1 to the extent necessary to permit an entity within the FMR Group to act as custodian without a written contract. Applicants believe that because there is such a close association between each Partnership and the FMR Group, requiring a detailed written contract would expose such Partnership to unnecessary burden and expense. An exemption also is requested from the terms of rule 17f-1(b)(4), as applicants do not believe the expense of retaining an independent accountant to conduct periodic verifications is warranted given the community of interest of all the parties involved and the existing requirement for an independent annual audit.

11. Section 17(g) and rule 17g-1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicants request an exemption from section 17(g) and rule 17g-1 to the extent necessary to permit each Partnership to comply with rule 17g-1 without the necessity of having a majority of the members of the related Board who are not "interested persons" take such actions and make such approvals as are set forth in rule 17g-

1. Applicants state that since all the members of the related Board will be affiliated persons, without the requested relief, a Partnership could not comply with rule 17j-1.

12. Section 17(j) and rule 17j-1 make it unlawful for certain persons to engage in fraudulent, deceitful, or manipulative practices in connection with the purchase or sale of a security held or to be acquired by an investment company. Rule 17j-1 also requires every registered investment company, its adviser, and its principal underwriter to adopt a written code of ethics with provisions reasonably designed to prevent fraudulent activities, and to institute procedures to prevent violations of the code. Applicants request an exemption from section 17(j) and rule 17j-1 (except rule 17j-1(a)). Applicants believe that requiring such Partnership to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time consuming and expensive, and would serve little purpose in light of, among other things, the community of interest among the Partners of such Partnership by virtue of their common association in the FMR Group, and the substantial and largely overlapping protection afforded by the conditions with which such Partnerships have agreed to comply.

13. Sections 30(a), 30(b), and 30(d), and the rules under those sections, generally require that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants believe that the forms prescribed by the SEC for periodic reports have little relevance to a Partnership and would entail administrative and legal costs that outweigh any benefit to the Limited Partners of such Partnership. An exemption is requested to the extent necessary to permit a Partnership to report annually to its Partners in the manner described above.

14. Section 30(f) requires that every officer, director, and member of an advisory board of a closed-end investment company be subject to the same duties and liabilities as those imposed upon similar classes of persons under section 16(a) of the Exchange Act. An exemption also is requested from section 30(f) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed members of an advisory board of such Partnership, such as members of the related Board, from filing Forms 3, 4, and 5 under section 16 of the Exchange Act with respect to their ownership of interests in such Partnership. Applicants argue that the

purpose intended to be served by section 30(f) is not apparent because there would be no trading market and the transfers of interests are severely restricted.

#### Applicants' Conditions

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

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d-1 to which a Partnership is a party (the "Section 17 Transactions") will be effected only if the Board, through the General Partner of such Partnership, determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of such Partnership and do not involve overreaching of such Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners of such Partnership, such Partnership's organizational documents and such Partnership's reports to its Partners. In addition, the General Partners of each Partnership will record and preserve a description of such affiliated transactions, the Board's findings, the information or materials upon which the Board's findings are based. All such records will be maintained for the life of such Partnership and at least two years thereafter and will be subject to examination by the SEC and its staff.<sup>10</sup>

2. In connection with Section 17 Transactions, the Board, through the General Partner of each Partnership, will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Partnership, or any affiliated person of such a person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest funds in any investment in which a "Co-Investor", as defined below, has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which such Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing

of all or part of its investment, (a) gives such General Partner sufficient, but not less than one day's notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless such Partnership has the opportunity to dispose of such Partnership's investment prior to or concurrently with, and on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor," with respect to any Partnership, is defined as any person who is: (a) An "affiliated person" (as such term is defined in the Act) of such Partnership (other than an FMR Fund); (b) an entity within the FMR Group; (c) an officer or director of an entity within the FMR Group; or (d) a company in which the General Partner of such Partnership acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which such Co-Investor is a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2-1 thereunder; or (e) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a United States national securities exchange or a United States national market system for securities.

4. Each Partnership and the General Partner of such Partnership will maintain and preserve, for the life of such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Partners of such Partnership, and each annual report of such Partnership required to be sent to such Partners, and agree that all such

<sup>10</sup> Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

records will be subject to examination by the SEC and its staff.<sup>11</sup>

5. The General Partner of each Partnership will send to each Partner of such Partnership who had an interest in any capital account of such Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by such partnership's independent accountants. At the end of each fiscal year, the General Partner of such Partnership will make a valuation or have a valuation made of all of the assets of such partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 90 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of such Partnership will send a report to each person who was a partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the partner of his or its federal and state income tax returns and a report of the investment activities of such Partnership during such year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with such Partnership by reason of a 5% or more investment in such entity by an FMR Group director, officer, or employee, such individual will not participate in such Partnership's determination of whether or not to effect such purchase or sale.

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

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 96-18050 Filed 7-15-96; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 22060; 812-10082]

### Sherry Lane Growth Fund, Inc., et al.; Notice of Application

July 10, 1996.

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

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

**APPLICANTS:** Sherry Lane Growth Fund, Inc. ("Fund") and Sherry Lane Capital Advisors, Inc. ("Adviser").

**RELEVANT ACT SECTIONS:** Order requested under sections 6(c) and 57(i) and rule 17d-1 thereunder permitting certain joint transactions otherwise prohibited by section 57(a)(4).

**SUMMARY OF APPLICATION:** Applicants request an order to permit the Fund and Davis Venture Partners II, L.P. ("DVP II") to co-invest in the same portfolio securities.

**FILING DATES:** The application was filed on April 10, 1996, and amended on June 27, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1996, and should be accompanied by proof of service on applicant, 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Fund and Adviser, 320 South Boston, Suite 1000, Tulsa, Oklahoma 74103-3703.

**FOR FURTHER INFORMATION CONTACT:** Mercer E. Bullard, Staff Attorney, (202) 942-0565, or Elizabeth G. Osterman, Assistant Director, (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.

#### Applicants' Representations

1. The Fund, a Delaware corporation, is a non-diversified closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act. The Fund filed a registration statement on Form N-2 that became effective May 29, 1996.

2. The Adviser is a registered investment adviser under the Investment Advisers Act of 1940 and is the investment adviser to the Fund. The Adviser is also responsible, subject to the oversight of the Fund's board of directors, for administering the Fund's business affairs. The chief executive officer and president of the Adviser also

serve as directors and chief executive officer and president of the Fund, and as general partners of the general partner of DVP II, a venture capital partnership. Applicants state that DVP II is not registered as an investment company in reliance on the exclusion from the definition of investment company in section 3(c)(1) of the Act.

3. The Fund's investment objective will be to achieve long-term capital appreciation. The Fund also will structure its investments to provide an element of current income through interest, dividends, and fees whenever feasible in light of market conditions and the cash flow characteristics of the portfolio companies. The Fund intends to invest in between 10 and 20 private investment opportunities that typically will require a substantial financial commitment.

4. The principals of the Adviser intend to select investments for the Fund and DVP II separately considering in each case only the investment objectives, investment position, available funds, and other pertinent factors of the particular fund, including applicable investment restrictions and regulatory requirements. Applicants state that the Fund and DVP II have similar investment objectives and expect that they frequently may invest in the same portfolio securities.

#### Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons from participating in a joint transaction with a BDC in contravention of rules as prescribed by the SEC. Under section 57(b)(1) of the Act, persons who are affiliated persons of the directors or officers of a BDC within the meaning of section 2(a)(3)(C) of the Act are subject to section 57(a)(4). Under section 2(a)(3)(C), an affiliated person of another person includes any person directly or indirectly controlled by such other person. DVP II may be deemed to be controlled by certain directors and officers of the Fund because they are also general partners of the general partner of DVP II. DVP II therefore may be deemed to be subject to section 57(a)(4) with respect to co-investments with the Fund.

2. Section 57(i) of the Act provides that, until the SEC prescribes rules under section 57(a)(4), the SEC's rules under sections 17(a) and 17(d) of the Act applicable to closed-end investment companies shall be deemed to apply to sections 57(a) and 57(d). Because the SEC has not adopted any rules under section 57(a)(4), rule 17d-1 applies.

3. Rule 17d-1, promulgated under section 17(d) of the Act, prohibits

<sup>11</sup> Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.