Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19841 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22107; 812–9956]

Daily Money Fund, et al.; Notice of Application

July 29, 1996.

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

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Daily Money Fund, Daily Tax-Exempt Money Fund, Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Advisor Annuity Fund, Fidelity Beacon Street Trust, Fidelity Boston Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Destiny Portfolios, Fidelity Deutsche Mark Performance Portfolio, L.P., Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Government Securities Fund, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Institutional Cash Portfolios, Fidelity Institutional Tax-Exempt Cash Portfolios, Fidelity Institutional Investors Trust, Fidelity Institutional Trust, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Sterling Performance Portfolio, L. P., Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investments—Bond Fund, L.P., Fidelity U.S. Investments—Government Securities Fund, L.P., Fidelity Yen Performance Portfolio, L.P., Variable Insurance Products Fund, Variable Insurance Products Fund II, Fidelity Management and Research Company (''FMR''), Fidelity Distributors Corporation (''FDC''), National Financial Services Corporation (''NFSC''), Fidelity Management Trust Company (''FMTC''), Strategic Advisers, Inc. (''SAI''), Fidelity Service Company (''FSC''), and Fidelity Investments Institutional Operations Company (''FIIOC'').

RELEVANT ACT SECTIONS: Order of exemption requested pursuant to section 6(c) of the Act from section 12(d)(1) of the Act, pursuant to sections 6(c) and 17(b) of the Act from section 17(a) of the Act, and pursuant to rule 17d–1 under the Act permitting certain joint transactions in accordance with section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The requested order would permit applicants to create one or more Fidelity ''fund of funds.''

FILING DATES: The application was filed on January 23, 1996, and amended on May 31, 1996 and on July 25, 1996. Applicants agree to file an additional amendment, the substance of which is incorporated herein, during the notice period.

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 August 23, 1996, 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 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, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, 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. Applicants propose to organize one or more ''fund of funds'' (each a ''Top Fund'') which will be an open-end management investment company organized as a Massachusetts or Delaware business trust. A Top Fund will initially have one or more series (''Top Portfolio'') and may organize additional Top Portfolios in the future. Each Top Portfolio may issue multiple classes of shares.

2. Each Top Portfolio may invest in shares of Fidelity open-end management investment companies (''Underlying Funds'') and their series (''Underlying Portfolios'') representing one or more of the following asset groups: the Equity Group, the Fixed Income Group, and the Money Market Group (''Investment Groups''). Investment Groups may be added or deleted at any time. Top Portfolios also may invest in Central Funds (as defined below), and directly in stocks, bonds, and liquid money market instruments, including pooled accounts of such instruments for which the investment adviser has obtained a SEC exemptive order (''money market instruments'').[1]

3. The Underlying Funds are open-end management investment companies registered under the Act. Each Underlying Funds may have one or more Underlying Portfolios and each Underlying Portfolio may issue multiple classes of shares. Top Portfolio shares and Underlying Portfolio shares may be subject to sales charges, including front-end and deferred sales charges, redemption fees, services fees, and rule 12b–1 fees under the Act.

4. Applicants request relief on behalf of each open-end management investment company or series thereof that is (a) advised by, or that in the future becomes advised by, FMR, FMTC, SAI, or a person controlling, controlled by, or under common control with FMR, FMTC, or SAI (collectively referred to as the ''Adviser''); or (b) distributed by FDC, NFSC, or a person controlling, controlled by, or under common control with FDC or NFSC

[1] *See* Investment Company Act Release Nos. 11962 (Sept. 29, 1981) (notice) and 12061 (Nov. 27, 1981) (order).

(collectively referred to as the ''Distributor'') (all such investment companies and series thereof are collectively referred to as the ''Fidelity Funds''). Each Fidelity Fund is a member of the same ''group of investment companies'' as defined in paragraph (a)(5) of rule 11a–3 under the Act.

5. The Adviser or an affiliate of the Adviser is, to the extent required, registered as an investment adviser under the Investment Advisers Act of 1940 and will be the investment adviser to each Top Fund, the Top Portfolios, the Underlying Funds, and the Underlying Portfolios. One or more of the Top Portfolios of a Top Fund may have a fixed investment portfolio and, therefore, may not use an investment adviser. In that case, the Adviser or an affiliate of the Adviser may act as the administrator for the Top Portfolio and would not be required to register as an investment adviser.

6. The Distributor is, to the extent required, registered as a broker/dealer under the Securities Exchange Act of 1934 (''Exchange Act''), and is the distributor of certain Fidelity Funds. FSC and FIIOC are registered transfer agents under the Exchange Act. Each is a transfer and dividend paying agent for certain Fidelity Funds (collectively referred to as ''Transfer Agent''). FMR is the parent holding company for the Adviser, the Distributor, and the Transfer Agent.

7. Certain applicants previously received an SEC order for an exemption from sections 12(d)(1), 17(a), 18(f), and 21(b) of the Act, and pursuant to section 17(d) of the Act and rule 17d–1 thereunder that permits certain Fidelity Funds to borrow and lend to each other through a credit facility (''Interfund Lending Order'').[2] If the present application is granted, the Top Funds and the Underlying Funds could participate in interfund lending. In addition, certain applicants recently filed an application with the SEC for an exemption from sections 12(d)(1), 15(a), and 17(a) of the Act, and pursuant to section 17(d) of the Act and rule 17d–1 thereunder (the ''Central Funds Application'').[3] The Central Funds Application seeks relief so that participating funds may purchase shares of one or more non-publicly traded Fidelity money-market funds and/or short-term bond funds (the ''Central Funds'') in excess of the percentage limits of section 12(d)(1). If the exemptions requested in the Central Funds Application and the present application are granted, a Top Fund could invest either directly in a Central Funds or in an Underlying Fund that could invest in a Central Fund.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides 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 any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) 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.

2. Section 6(c) provides that the SEC may exempt persons or transactions if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from section 12(d)(1) to permit any Top Portfolio to invest in the Underlying Portfolios in excess of the percentage limitations of section 12(d)(1).

3. Section 12(d)(1) was intended to mitigate or eliminate actual or potential abuses that might arise when one investment company acquires shares of another investment company. These abuses include the acquiring fund imposing undue influence over the management of the acquired funds through the threat of disruptive redemptions, the acquisition by the acquiring company of control of the acquired company, the layering of fees, and the creation of a complex pyramidal structure that may be confusing to investors.

4. Applicants believe that none of these potential abuses would be present in the structure of the Top Portfolios. The Top Portfolios would not exercise any influence over the management of the acquired Underlying Portfolios by the threat of redemptions. Because of the common control of management between the Top Portfolios and the Underlying Portfolios, the Adviser would not structure a Top Portfolio as a vehicle for short-term traders or to otherwise contribute to disruptive cash flow volatility at the Underlying Portfolio level.

5. Applicants represent that the Top Fund will be structured so that an investment in a 1 Top Portfolio will not result in an unnecessary duplication of costs. The Adviser may charge each Top Portfolio an advisory fee to compensate it for monitoring the addition, deletion, and substitution of the Underlying Portfolios within particular Investment Groups and the periodic adjustments among Investment Groups. Each Top Portfolio's shareholder also will pay indirectly their share of the advisory fees and expenses paid by shareholders of the Underlying Portfolios. This will not result in a duplication of advisory fees because the Adviser's services for a Top Portfolio will be in addition to, and not duplicative of, services provided to the Underlying Portfolios.

6. Applicants also assert that their proposed fund of funds structure does not present any danger of excessive sales charges. Although the Distributor may impose sales charges, service fees, and/or rule 12b–1 fees at both the Top Portfolio and Underlying Portfolio levels, sales and distribution expenses relating to the shares of a Top Portfolio will not exceed the limits in Article III, Section 26 of the NASD's Rules of Fair Practice when aggregated with any sales and distribution expenses that the Top Portfolio pays relating to the respective Underlying Portfolio shares. The aggregate sales and distribution expenses at both levels, therefore, will not exceed the limit that otherwise lawfully could be charged at any single level.

7. Section 17(a) makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Because each Top Portfolio and each Underlying Portfolio are advised by the Adviser or an affiliate under common control with the Adviser, they could be deemed to be under the common control of the Adviser and thus affiliated of one another. Thus, an Underlying Portfolio's issuance of its shares to a Top Portfolio may be considered a sale prohibited by section 17(a).

8. 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

[2] *See Daily Money Fund, et al.*, Investment Company Act Release Nos. 17257 (Dec. 8, 1989) (notice) and 17303 (Jan. 11, 1990) (order).

[3] *Daily Money Fund, et al.*, File No. 812–9844.

with the general provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Underlying Portfolios to sell their shares to each Top Portfolio.[4] Applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).

9. Section 17(d) prohibits an affiliated person of a registered investment company from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of SEC rules and regulations. Rule 17d–1 provides that an affiliated person of a registered investment company acting as principal, shall not participate in any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the SEC has issued an order approving the arrangement. Applicants request an order pursuant to section 17(d) and rule 17d–1 thereunder to the extent that the proposed transactions described in the application, including each Top Fund's possible entry into a Servicing Agreement, as defined below, may be deemed to be joint transactions between affiliated persons.

10. Administrative expenses (including transfer agent, shareholder servicing, custody, legal, and accounting expenses) may be charged at both the Top Portfolio and Underlying Portfolio levels. Applicants might adopt one of a number of possible administrative expense structures. Two examples of possible administrative expense structures are given below. However, any structure implemented will comply with the conditions to the application listed at the end of this notice. As one example, all administrative expenses would be paid for in accordance with a Special Servicing Agreement (''Servicing Agreement'') among each Top Fund, the Underlying Funds, and the Transfer Agent. Under the Servicing Agreement, each Top Portfolio would pay for services provided by the Transfer Agent, and would reimburse the Transfer Agent for services provided by other persons, except to the extent those services, or a portion of them, are paid by the Underlying Portfolios. Applicants represent that each Top Portfolio is expected to create economies for the Underlying Portfolios due primarily to a reduction in the administrative expenses to the Underlying Portfolios of servicing the Top Portfolios. If the aggregate financial benefits to the Underlying Portfolio equals or exceeds the costs of the Top Portfolio with respect to its investment in the Underlying Portfolio, there would be no charge to the Top Portfolio for the services under the Servicing Agreement. If the aggregate financial benefits to the Underlying Portfolio does not equal or exceed the administrative expenses of the Top Portfolio, the Top Portfolio would pay that portion of costs determined to be in excess of the benefits, except to the extent such costs are paid by the Adviser.

11. Alternatively, applicants might adopt a structure that did not seek to balance administrative expenses and benefits between the Top Funds and the Underlying Funds. For example, each Top Portfolio may maintain its shareholder accounts and bear all expenses related thereto. The Underlying Fund would maintain record ownership of the shares owned by the Top Portfolio in a single account in the name of the Top Portfolio. An Underlying Portfolio may adopt a separate class of shares (''New Class'') that would be offered to the Top Portfolios. Expense ratios for the New Class would be expected to be lower than those of other classes of the Underlying Portfolio, primarily due to lower administrative expenses. Applicants represent that the proposed arrangement would be advantageous to all applicants, and that participation of any Fidelity Fund would not be on a basis less advantageous or different from those of any other participants.

Applicants' Conditions

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

1. A Top Portfolio and its Underlying Portfolios will be members of the same ''group of investment companies,'' as defined in paragraph (a)(5) of rule 11a–3 under the Act.

2. No Underlying Portfolio shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except as otherwise permitted by order of the SEC pursuant to this application and under the Interfund Lending Order, and as may in the future be permitted by order of the SEC pursuant to the Central Funds Application.

3. A majority of the trustees of each Top Fund will not be ''interested persons,'' as defined in section 2(a)(19) of the Act.

4. Before approving any advisory contract under section 15, the board of trustees of each Top Fund, on behalf of each Top Portfolio, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19), shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Portfolio's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Top Portfolio.

5. Any sales charges and other distribution-related fees charged with respect to securities of a Top Portfolio, when aggregated with any sales charges and distribution-related fees paid by the Top Portfolio with respect to securities of the respective Underlying Portfolios, shall not exceed the limits set forth in Article III, section 26, of the NASD Rules of Fair Practice.

6. The applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average net assets for each Top Portfolio and each of its Underlying Portfolios or Underlying Classes (as applicable); monthly purchases and redemptions (other than by exchange) for each Top Portfolio and each of its Underlying Portfolios or Underlying Classes (as applicable); monthly exchanges into and out of each Top Portfolio and each of its Underlying Portfolios or Underlying Classes (as applicable); month-end allocations of each Top Portfolio's assets among its Underlying Portfolios or Underlying Classes (as applicable); annual expense ratios for each Top Portfolio and each of its Underlying Portfolios or Underlying Classes (as applicable); and a description of any vote taken by the shareholders of any Underlying Portfolio or Underlying Class (as applicable), including a statement of the percentage of votes cast for and against the proposal by the Top Portfolio and by the other shareholders of the Underlying Portfolios or Underlying Classes (as applicable). Such information will be provided as soon as reasonably practicable following each fiscal year-end of the Top Portfolio (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

[4] Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. *See Keystone Custodian Funds*, 21 S.E.C. 295, 298–299 (1945). Section 6(c) can be used, along with section 17(b), to grant relief from section 17(a) for an ongoing series of future transactions.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19760 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22110; 812–10108]

The Lazard Funds, Inc., et al; Notice of Application

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

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

APPLICANTS: The Lazard Funds, Inc. (the ''Fund''), and Lazard Freres Asset Management (''Lazard'').

RELEVANT ACT SECTION: Order requested under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit certain investment companies to deposit their uninvested cash balances in a single joint account to be used to enter into short-term investments.

FILING DATES: The application was filed on April 26, 1996, and amended on July 15, 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 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 August 26, 1996, 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 5th Street, N.W., Washington, D.C. 20549. Applicants, 30 Rockefeller Plaza, New York, N.Y. 10020.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

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 Maryland corporation, is a registered, open-end management investment company currently consisting of twelve portfolios (the ''Portfolios''). Lazard, a division of Lazard Freres & Co. LLC, serves as investment adviser to each Portfolio. Applicants request that any relief granted also apply to any future portfolios of the Fund and any future investment companies or portfolios thereof for which Lazard or any entity under common control or controlled by Lazard subsequently serves as investment adviser.

2. State Street Bank and Trust Company (''State Street'') provides administrative services to each Portfolio and serves as each Portfolio's custodian.

3. Lazard has discretion to purchase and sell securities for the Portfolios in accordance with each Portfolio's investment objectives, management policies and investment restrictions. All Portfolios currently are authorized by their investment policies and limitations to invest at least a portion of their uninvested cash balances in short-term liquid investments, including short term money market instruments with overnight, over-the-weekend or over-the-holiday maturities (''Short Term Money Market Instruments'')[1] and repurchase agreements.

4. Applicants expect that at the end of each trading day, some or all of the Portfolios will have uninvested cash balances in their custodian accounts that otherwise would not be invested in portfolio securities by Lazard. Generally, such cash balances are invested separately on behalf of each Portfolio in individual repurchase agreements. The Portfolios' uninvested cash balances typically are not invested in Short Term Money Market Instruments because such investments ordinarily cannot be made on a cost-efficient basis given the relatively small size of each Portfolio's cash balance.

5. Applicants propose to deposit some or all of the Portfolios' uninvested cash balances remaining at the end of each trading day into a single joint account, the daily balance of which would be invested in: (a) repurchase agreements ''collateralized fully,'' as defined in rule 2a–7 under the Act; and (b) Short Term Money Market Instruments which constitute ''Eligible Securities'' within the meaning of rule 2a–7 under the Act. The Portfolios that are eligible to participate in the joint account and that elect to participate in such account are collectively referred to as ''Participants.''

6. Applicants propose that Lazard be responsible for negotiating the terms of these transactions in accordance with the investment objectives, management policies and investment restrictions of each Participant. Except insofar as it is an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Participants, Lazard will have no monetary participation in the joint account, but will be responsible for investing assets in the joint account, establishing accounting and control procedures, and ensuring the equal treatment of each Participant.

7. Each Portfolio has established certain systems and standards relating to repurchase agreements. These standards include quality standards for issuers of repurchase agreements and requirements that the repurchase agreements will be fully collateralized at all times. Any joint repurchase agreement transaction will be effected in accordance with Investment Company Act Release No. 13005 (February 2, 1983) and with any other existing and future positions taken by the SEC. In the event that the SEC sets forth guidelines with respect to any type of Short Term Money Market Instrument, all such investments made through the joint account will comply with those guidelines.

8. A Participant's decision to invest in the joint account will be solely at its option; a Participant will not be required either to invest a minimum amount or to maintain a minimum balance in the joint account.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of a registered investment company from participating in any joint enterprise or arrangement in which such investment company is a participant, without an SEC order.

2. The Participants, by participating in the proposed joint account, and Lazard, by managing the proposed joint account, could be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d). In addition, the proposed joint account could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1.

3. Although Lazard might gain some benefit through administrative convenience and some possible reduction in clerical costs, the

[1] Such instruments may include Treasury bills, United States government agency certificates, Euro CDs, overnight commercial paper, term bank deposits, certificates of deposit and bankers' acceptances of United States banks.