

participating Portfolios and their shareholders will be the primary beneficiaries of the joint account because the joint account may earn higher returns and result in lower transaction costs for the Portfolios, and would be a more efficient means of administering the Portfolios' daily investment transactions.

4. Applicants believe that a Portfolio will never be in a less favorable position than if the joint account were not in place. The assets of a Participant held in the joint account will not be subject to the claims of creditors of other Participants.

5. Participants may earn a higher rate of return on investments through the joint account relative to the returns they could earn individually. Under most market conditions, it is generally possible to negotiate a rate of return on larger repurchase agreements and Short Term Money Market Instruments that is higher than the rate available on smaller repurchase agreements and Short Term Money Market Instruments. The joint account also may increase the number of dealers willing to enter into short-term investment transactions with the participating Portfolios and may reduce the possibility that their cash balances remain uninvested.

6. The joint account may result in certain administrative efficiencies. In addition, by reducing the number of trade tickets which would have to be written, transactions would be simplified, with concomitant reduction of the potential for errors. For the reasons set forth above, applicants believe that granting the requested order is consistent with the provisions, policies, and purposes of the Act and the intention of rule 17d-1.

Applicants' Conditions

Applicants will comply with the following as conditions to any order granted by the SEC:

1. A separate custodial cash account will be established with the State Street for the joint account into which each Portfolio will be permitted to have deposited daily some or all of its uninvested net cash balances after the conclusion of its daily trading activity. (If in the future any Portfolio has a custodian other than State Street at which the joint account will be maintained, such Portfolio will appoint such other custodian as a sub-custodian for the limited purpose of receiving cash for deposit into the joint account.) The joint account will not be distinguishable from any other accounts maintained by any Portfolio with State Street, except that monies of the Portfolios will be deposited on a commingled basis. The

joint account will not have a separate existence and will not have any indicia of a separate legal entity. The sole function of the joint account will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by each Portfolio of its uninvested cash balances.

2. Cash in the joint account will be invested in one or more of the following, as directed by Lazard: (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.

3. Each Participant's funds in the joint account will be invested consistent with that Participant's investment objective(s), management policies and investment restrictions. Not every Participant in the joint account necessarily will have its cash invested in every repurchase agreement entered into and/or Short Term Money Market Instrument purchased through the joint account. However, to the extent a Participant's funds are applied to a particular investment made through the joint account, the Participant will participate in and own a proportionate share of such investment and the income earned or accrued thereon, based upon the percentage of such investment purchased with such Participant's funds.

4. Lazard and State Street will maintain records (in conformity with section 31 of the Act and the rules and regulations thereunder) documenting, for any given day, each Participant's aggregate investment in the joint account and its *pro rata* share of each investment made through the joint account.

5. The securities subject to the repurchase agreement will be transferred to the custodial joint account. The securities will not be held by the repurchase agreement counterparty or by an affiliated person of that counterparty.

6. All investments held by the joint account will be valued on an amortized cost basis.

7. To ensure that there will be no opportunity for one Participant, no Portfolio will be allowed to create a negative balance in the joint account for any reason, although it will be permitted to draw down its entire balance at any time. Each Portfolio's decision to invest in the joint account will be solely at its options, and no Portfolio will be obligated either to invest in the joint account or to maintain any minimum balance in the

joint account. In addition, each Participant will retain the sole rights of ownership to any of its assets invested in the joint account, including interest payable on such assets invested in the joint account.

8. Lazard will administer the investment of the cash balance in and operation of the joint account as part of its duties under its existing or any future investment management agreements with the Portfolios. Lazard will not collect any additional or separate fee for managing the joint account.

9. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g-1 thereunder.

10. The Fund's Board will adopt procedures for each of the Portfolios pursuant to which the joint account will operate, which will be reasonably designed to provide that the requirements of this application will be met. The Fund's Board members will make and approve changes they deem necessary to ensure that such procedures are followed. In addition, the Fund's Board members will determine, no less frequently than annually, that the joint account has been operated in accordance with such procedures and will only permit a Portfolio to continue to participate therein if it determines that there is a reasonable likelihood that the Portfolio and its shareholders will benefit from the Portfolio's continued participation.

11. Each Portfolio that values its assets in reliance upon rule 2a-7 under the act will use the average maturity of the instrument(s) in the joint account (determined on a dollar weighted basis) for the purpose of computing that Portfolio's average Portfolio maturity with respect to the portion of its assets held in the joint account on that day.

For the SEC, by the Division of Investment Management, under delegated authority.
Margaret H. McFarland,
Deputy Secretary.

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[Rel. No. IC-2111; 812-9760]

The Pilot Funds, et al.; Notice of Application

July 30, 1996.

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

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

APPLICANTS: The Pilot Funds, Boatmen's Trust Company ("Boatmen's"), and Kleinwort Benson Investment Management Americas Inc. ("Kleinwort Benson").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B), under sections 6(c) and 17(b) for an exemption from section 17(a), and under section 17(d) and rule 17d-1 thereunder permitting certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain investment companies to purchase shares of affiliated money market funds in excess of the limits prescribed in section 12(d)(1).

FILING DATES: The application was filed on September 12, 1995 and amended on March 22, 1996, on May 31, 1996, and on July 25, 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 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Pilot Funds, 125 West 55th Street, New York, New York 10019; Boatmen's, 100 North Broadway, St. Louis, Missouri 63178.

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. The Pilot Funds is an open-end management investment company that currently offers fourteen series (each, a "Pilot Fund"). Four of the Pilot Funds are money market funds subject to the

requirements of rule 2a-7 under the Act (together with any future money market funds, the "Money Market Funds"). The other ten Pilot Funds are non-money market funds (together with any future non-money market funds, the "Non-Money Market Funds"). Applicants request relief on behalf of the Pilot Funds and any other registered investment companies that now or in the future are advised by Boatmen's (collectively, the "Funds").¹

2. Boatmen's serves as investment adviser for each Pilot Fund. Kleinwort Benson serves as sub-investment adviser for the Pilot International Equity Fund (together with Boatmen's and any entity controlling, controlled by, or under common control with Boatmen's, Kleinwort Benson, and any future sub-investment adviser to a Fund, the "Investment Advisers"). Pilot Funds Distributors Inc. serves as distributor for each Fund. BISYS Fund Services Limited Partnership serves as administrator for each fund.

3. The Money Market Funds seek current income and liquidity consistent with the preservation of capital by investing exclusively in short-term money market instruments. The Non-Money Market Funds invest in a variety of debt and/or equity securities in accordance with their respective investment objectives and policies. Each of the Funds has, or may be expected to have, uninvested cash in an account with the custodian. This cash either may be invested directly in individual short-term money market instruments or may not be invested in any portfolio securities.

4. Applicants request an order that would permit (a) each of the Funds to utilize cash reserves that have not been invested in portfolio securities to purchase shares of one or more of the Money Market Funds (each such Fund purchasing shares of the Money Market Funds is an "Investing Fund") and (b) each Money Market Fund to sell shares to, and redeem such shares from, an Investing Fund. By investing cash balances in the Money Market Funds as proposed, applicants believe that the Investing Funds will be able to reduce their transaction costs, create more liquidity, enjoy greater returns, and further diversify their holdings.

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 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) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act 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.

3. Applicants' request would permit the Investing Funds to use uninvested cash to acquire shares of a Money Market Fund in excess of the percentage limitations set out in section 12(d)(1)(A). Applicants proposed that each Investing Fund be permitted to invest in shares of a Money Market Fund so long as each Fund's aggregate investment in such Money Market Fund does not exceed 25% of the Investing Fund's total net assets. Applicants' request also would permit the Money Market Funds to sell their securities to an Investing Fund in excess of the percentage limitations set out in section 12(d)(1)(B).

4. The restrictions in section 12(d)(1) were intended to prevent certain abuses perceived to be associated with the pyramiding of investment companies, including: (a) undue influence by the fund holding company over its underlying funds; (b) the threat of large scale redemptions of the securities of the underlying investment companies; (c) unnecessary duplication of costs, e.g., sales loads, advisory fees, and administrative costs; and (d) unnecessary complexity. For the following reasons, applicants believe that the proposed arrangement does not entail the type of abuse that Congress adopted section 12(d) to prevent.

5. Applicants represent that the proposed arrangement would contain no improper layering of fees. The shareholders of the Investing Funds would not be subject to the imposition of double management fees. Before approving any advisory contract, the Investing Fund's board of trustees,

¹ All existing investment companies that presently intend to rely on the requested order are named as applicants.

including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, will consider to what extent the advisory fees charged to the Investing Fund should be reduced to account for the reduction of these services as a result of a portion of the assets of the Investing Fund being invested in the Money Market Fund. Further, no sales load, redemption fee, distribution fee, or service fee will be charged by the Money Market Funds with respect to the purchase or redemption of the Money Market Fund shares. If a Money Market Fund offers more than one class of shares, each Investing Fund will invest only in the class with the lowest expense ratio at the time of investment.

6. Sections 17(a)(1) and (2) make it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from such investment company. Because each Fund may be deemed to be under common control with the other Funds, it may be an "affiliated person," as defined in section 2(a)(3) of the Act, of the other Funds. Accordingly, the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of such shares from the Investing Funds, would be prohibited under section 17(a).

7. Section 17(b) authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Investing Funds to purchase shares of a Money Market Fund, and a Money Market Fund to redeem such shares.²

8. The Investing Funds will retain their ability to invest their cash balances directly in money market instruments as authorized by their respective investment objectives and policies, if they believe they can obtain a higher return or for any other reason. Each of the Money Market Funds has the right to discontinue selling shares to any of the Investing Funds if its board of trustees determines that such sales

would adversely affect the Money Market Fund's portfolio management and operations. Therefore, applicants believe that the proposal satisfies the standards for relief in sections 6(c) and 17(b).

9. Section 17(d) and rule 17d-1 prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Each Investing Fund, by purchasing shares of the Money Market Funds, each Investment Adviser of an investing Fund, by managing the assets of the Investing Funds invested in the Money Market Funds, and each Money Market Fund, by selling shares to the Investing Funds, could be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) and rule 17d-1.

10. In passing upon applications submitted pursuant to section 17(d) and rule 17d-1, the SEC will consider whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed 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. Applicants believe that the proposal satisfies these standards.

Applicants Conditions

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

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in section 26(b)(9) of the NASDd Rules of Fair Practice).

2. Before the next meeting of the board of trustees of an Investing Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Investment Adviser to the Investing Fund will provide the board of trustees with specific information regarding the approximate cost to the Investment Adviser for, or portion of the advisory fee under the existing advisory fee attributable to, managing the assets of the Investing Fund that can be expected to be invested in the Money Market Fund. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Investing Fund, including a majority of

the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Investment Adviser should be reduced to account for the reduction of these services to the Fund by the Investment Adviser under the advisory contract as a result of a portion of the assets of the Fund being invested in the Money Market Fund. The minute books of the Investing Fund will record fully the board's consideration in approving the advisory contract, including the consideration relating to fees referred to above.

3. Each Investing Fund will invest uninvested cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Investing Fund's total net assets.

4. Investment in shares of the Money Market Funds will be in accordance with each investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectuses and statements of additional information.

5. Each Investing Fund, each Money Market Fund, and any future fund that may rely on the order shall be advised by the Investment Adviser, or a person controlling, controlled by, or under common control with the Investment Adviser.

6. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. A majority of the directors of an Investing Fund will not be "interested persons," as defined in section 2(a)(19) of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

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² 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, 298-99 (1945). Section 6(c), along with section 17(b), frequently are used to grant relief from section 17(a) to permit an ongoing series of future transactions.