agent no longer qualifies for the exemption, and to determine the extent to which that transfer agent is subject to regulation.

The BGFRS receives approximately twelve notices of exempt status and six notices of loss of exempt status annually. The FDIC receives approximately eighteen notices of exempt status and three notices of loss of exempt status annually. The Commission and the Office of the Comptroller of the Currency (''OCC'') do not require transfer agent to file notice of exempt status or loss of exempt status. Instead, transfer agents whose ARA is the Commission or OCC need only to prepare and maintain these notices. The Commission estimates that approximately sixteen notices of exempt status and loss of exempt status are prepared annually by transfer agents whose ARA is the Commission. Similarly, the OCC estimates that the transfer agents for which it is the ARA prepare and maintain approximately fifteen notices of exempt status and loss of exempt status annually. Thus, a total of approximately seventy notices of exempt status and loss of exempt status are prepared and maintained by transfer agents annually. Of these seventy notices, approximately forty are filed with an ARA. Any additional costs associated with filing such notices would be limited primarily to postage, which would be minimal. Since the Commission estimates that no more than one-half hour is required to prepare each notice, the total annual burden to transfer agents is approximately thirty-five hours. The average cost per hours is approximately $30. Therefore, the total cost of compliance is the transfer agent community is $1,050.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: May 22, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14211 Filed 5–30–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22682; 813–156]

DLJ LBO Plans Management Corporation and DLJ First ESC L.L.C.; Notice of Application

May 23, 1997.

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

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

APPLICANTS: DLJ LBO Plans Management Corporation (''DLJ Management'') and DLJ First ESC L.L.C. (the ''Initial Company''), on behalf of certain limited liability companies which may be formed in the future (the ''Subsequent Companies'') (together with the Initial Company, the ''Companies'').

RELEVANT ACT SECTIONS: Applicants request an 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 that would grant the Companies an exemption from most provisions of the Act, and would permit certain affiliated and joint transactions. Each Company will be an employees' securities company within the meaning of section 2(a)(13) of the Act.[1]

FILING DATES: The application was filed on November 1, 1996 and amended on March 14, 1997 and May 23, 1997.

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 June 17, 1997, 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 interests, 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, 277 Park Avenue, New York, New York 10172.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Elizabeth G. Osterman, Assistant Director, 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. DLJ Management is a Delaware corporation and an indirect wholly-owned subsidiary of Donaldson, Lufkin and Jenrette, Inc. (''DLJ Inc.'') (together with any person that is directly or indirectly controlled by DLJ Inc., ''DLJ''). DLJ Inc. is a diversified financial services holding company which, directly and through its subsidiaries, provides investment, financing, and related services. DLJ Inc.'s principal subsidiary, Donaldson, Lufkin & Jenrette Securities Corporation, is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'').

2. DLJ Management is the manager of the Initial Company, and it, or another direct or indirect wholly-owned subsidiary of DLJ formed for such purpose, will be the manager of the Subsequent Companies (the ''Manager''). The Manager is registered as an investment adviser under the Investment Advisers Act of 1940 and will continue to maintain such registration.

3. Each Company is or will be a Delaware limited liability company formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and is operating or will operate as a closed-end, non-diversified, management investment company. The Manager intends to form the Companies to enable Eligible Employees of DLJ and their Qualified Participants (in each case, as defined below) to pool their investment resources and to receive the benefit of certain investment opportunities that come to the attention of DLJ without the

[1] The requested order would supersede an existing order. *DLJ LBO Plans Management Corporation*, Investment Company Act Release Nos. 20053 (Feb. 2, 1994) (notice) and 20103 (Mar. 1, 1994) (order).

necessity of having each investor identify such opportunities and analyze their investment merit.

4. Interests in the Companies (''Interests'') will be sold only to Eligible Employees or, at the request of Eligible Employees, Qualified Participants of such Eligible Employees. In order to qualify as an ''Eligible Employee,'' (i) an individual must (a) be a current or former employee, officer, director, or ''Consultant'' [2] of DLJ and (b) meet the standards of an accredited investor under rule 501(a)(6) of Regulation D (''Regulation D'') under the Securities Act of 1933 (the ''Securities Act''), or (ii) an entity must (a) be a current or former Consultant of DLJ and (b) meet the standards of an accredited investor under rule 501(a) of Regulation D. In order to qualify as a ''Qualified Participant,'' an individual or entity must (i) be an Eligible Family Member or Qualified Entity (in each case as defined below), respectively, of an Eligible Employee, and (ii) if such individual or entity is purchasing an Interest from a Member [3] or directly from the Company, come within one of the categories of an ''accredited investor'' under rule 501(a) of Regulation D. An ''Eligible Family Member'' is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A ''Qualified Entity'' is (i) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (ii) a partnership, corporation, or other entity controlled by an Eligible Employee; or (iii) a trust or other entity established for the benefit of Eligible Family Members of an Eligible Employee.

5. If an Eligible Employee is required to make an investment decision with respect to whether or not to participate, or to request that a related Qualified Participant be permitted to participate, in a Company, such Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in such Company without the benefit of regulatory safeguards. Participation in a Company will be voluntary on the part of the Eligible Employee.

6. DLJ proposes to offer various investment programs for the benefit of its Eligible Employees. These programs may be structured as different Companies, or as separate plans within the same Company, and the terms of these programs are likely to differ from one another. While the terms of a Company will be determined by DLJ in its discretion, these terms will be fully disclosed to each Eligible Employee and, if a Qualified Participant of such Eligible Employee is required to make an investment decision with respect to whether or not to participate in a Company, to such Qualified Participant at the time the eligible Employee is invited to participate in the Company. Among other things, each Eligible Employee and, if a Qualified participant of such Eligible Employee is required to make an investment decision with respect to whether or not to participate in a Company, such Qualified Participant will be furnished with a copy of the Limited Liability Company Agreement for the relevant Company, which will set forth at a minimum the following terms of the proposed investment program, if applicable: (i) Whether DLJ will make a co-investment in the same portfolio company as the Company, and the terms applicable to the Company's investment as compared to that of DLJ's investment; (ii) the maximum amount of capital contributions that a Participant will be required to make to the Company during the term of the relevant investment program, and the manner in which the capital contributions will be applied towards investments made, and expenses incurred, by the Company; (iii) whether the Manager or DLJ will make any loans to a Participant to purchase the Interest in the Company, and, if so, the terms of such loans; (iv) whether the Manager will be entitled to receive any compensation or performance-based fee (''carried interest'') based on the gains and losses of the investment program or of the Company's investment portfolio, and, if so, the terms of such compensation or carried interest; (v) whether the Manager will make any capital contributions to the Company, and, if so, the terms applicable to the Manager's investment in the Company; (vi) the consequences to a Participant who defaults on his obligation to fund required capital contributions to the Company (including whether such defaulting person's Interest in existing and future investments will be affected and, if so, the nature of such effects); and (vii) whether any vesting and forfeiture provisions will apply to a Participant's Interest in the Company and, if so, the terms of such vesting and forfeiture provisions.

7. In an investment program that provides for vesting provisions, an English Employee's Interest at the commencement of the program will be treated as being entirely ''unvested,'' and ''vesting'' will occur either (i) through the passage of a specified period of time (for example, an Interest might vest over a three year period, ⅓ for each year) or (ii) upon the occurrences of a specified event (for example, a change of control). To the extent an Eligible Employee's Interest becomes ''vested,'' the termination of such Eligible Employee's employment will not affect the Eligible Employee's rights with respect to the vested portion of the Interest, unless certain specified events described in representation 8 below occur. The portion of an Eligible Employee's Interest that is ''unvested'' at the time of termination of such Eligible Employee's employment may be subject to repurchase by DLJ.

8. the consequences of the vesting and forfeiture provisions, if any, will not be more onerous than those set forth below. The terms described below as to the vesting and forfeiture of Interests will apply equally to any Qualified Participant of an Eligible Employee under the circumstances where such Eligible Employee has triggered such provisions. Unless (i) an Eligible Employee's relationship with DLJ is terminated for cause or (ii) a former Eligible employee becomes employed by, or a partner in, consultant to, or otherwise joins any firm that the Manager determines, in its reasonable discretion, to be competitive with DLJ's merchant banking or investment banking (including high yield) businesses or any other business of DLJ, his vested Interest in the Company will not be affected in any manner. However, if the events described in clauses (i) or (ii) above occur, the Eligible Employee's entire Interest will be deemed to be unvested and subject to repurchase, as described below. In addition, if an Eligible Employee voluntarily resigns his/her employment with DLJ, any unvested Interest will similarly be subject to repurchase, as described below.

9. upon any repurchase of a former Eligible Employee's unvested Interest, the Manager will at a minimum pay to the Eligible Employee the lesser of (i) the amount actually paid by the Eligible Employee to acquire the unvested Interest, and (ii) the fair market value, determined at the time of repurchase in good faith by the Manager, of such unvested Interest.

10. It is possible that an investment program may be structured in which a Company will co-invest in a portfolio company with an investment fund or account, organized for the benefit of investors who are not affiliated with

[2] A ''Consultant'' is a person or entity whom DLJ has engaged on retainer to provide services and professional expertise on an ongoing basis.

[3] ''Member'' means any member of a Company within the meaning of the Delaware Limited Liability Company Act. ''Participant'' means any Member other than the Manager.

DLJ,[4] over which a DLJ entity (other than the Manager) exercises investment discretion (a ''Third Party Fund'') or DLJ. Side-by-side investments held by a Third party Fund, or by DLJ entity in a transaction in which the DLJ investment was made pursuant to a contractual obligation to a Third Party Fund, will not be subject to the restrictions contained in condition 3 below. All other side-by-side investments held by DLJ entities will be subject to the restrictions contained in condition 3 below.

11. Applicant believes that the interests of the Eligible Employees participating in a Company will be adequately protected even in situations where condition 3 does not apply. In structuring a Third Party Fund, it is common for the unaffiliated investors of such fund to require that DLJ invest its own capital in fund investments, either through the fund or on a side-by-side basis, and that such DLJ investments be subject to substantially the same terms as those applicable to the fund's investments. It is important to DLJ that the interests of the Third Party Fund take priority over the interests of the Companies, and that the activities of the Third Party Fund not be burdened or otherwise affected by activities of the Companies. If condition 3 were to apply to DLJ's investment in these situations, the effect of such a requirement would be to indirectly burden the Third Party Fund with the requirements of condition 3. In addition, the relationship of a Company to a Third Party Fund is fundamentally different from such Company's relationship to DLJ. The focus of, and the rationale for, the protections contained in the requested relief are to protect the Companies from any overreaching by DLJ in the employer/employee context, whereas the same concerns are not present with respect to the Companies vis-a-vis the investors of a Third Party Fund.

12. A Company will not invest more than 15% of its assets of a particular investment program in securities issued by registered investment companies (with the exception of temporary investments in money market funds), and a Company will not acquire any security issued by a registered investment company if immediately after such acquisition any investment program contained in the Company will own more than 3% of the outstanding voting stock of the registered investment company.

[4] These unaffiliated investors include institutional investors such as public and private pension funds, foundations, endowments, and corporations, and high net worth individuals, in each case both domestic and foreign.

Applicants' Legal Analysis

1. 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 any provision of 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.

2. Applicants request an 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.

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.

4. Applicants request an exemption from section 17(a) of the Act to the extent necessary to (i) permit a DLJ entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Company or any company controlled by such Company; (ii) permit any Company to invest in or engage in any transaction with any DLJ entity, acting as principal, (a) in which such Company, any company controlled by such Company, or any DLJ entity or Third Party Fund has invested or will invest, or (b) with which such Company, any company controlled by such Company, or any DLJ entity or Third Party Fund is or will become otherwise affiliated; and (c) permit any partner or other investor in a Third Party Fund (a ''Third Party Investor''), acting as principal, to engage in any transaction directly or indirectly with any Company or any company controlled by the Company.

5. Applicants state that an exemption from section 17(a) is consistent with the policy of each Company and the protection of investors and necessary to promote the basic purpose of such Company. Applicants state that the Participants in each Company will have been fully informed of the possible extent of such Company's dealings with DLJ, and, as successful professionals employed in the banking and financial services business, or related businesses, will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants in each Company, on the one hand, and DLJ, on the other hand, is the best insurance against any risk of abuse.

6. 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 with the affiliated person 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.

7. Applicants request an exemption from section 17(d) under the Act and rule 17d–1 thereunder to the extent necessary to permit affiliated persons of each Company (including without limitation the Manager, DLJ, other DLJ entities and a Third Party Fund), or affiliated persons of any of these persons (including without limitation the Third Party Investors) to participate in, or effect any transaction in which such Company or a company controlled by such Company is a participant. Applicants state that the exemption requested would permit, among other things, co-investments by each Company and individual members or employees, officers, directors, or Consultants of DLJ making their own individual investment decisions apart from DLJ.

8. Applicants assert that the flexibility to structure co-investments and joint investments in the manner described above will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by DLJ, on the one hand, and a Company on the other, might lead to less advantageous treatment of such Company, should be mitigated by the fact that (i) DLJ, in addition to its stake through the Manager and its co-investment, will be acutely concerned with its relationship with the personnel who invest in such Company, and (ii) senior officers and directors of DLJ entities will be investing in such Company.

9. Section 17(e) of the Act and rule 17e–1 thereunder limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to the extent necessary to permit a DLJ entity (including the Manager), acting as an agent or broker, to receive placement fees, advisory fees, or other compensation from a Company in connection with the purchase or sale by the Company of securities. Applicants state that the DLJ entity will be permitted to charge such fees or otherwise receive such compensation in a transaction that is not exempted pursuant to rule 17e–1 only if (i) the Company is purchasing or selling securities alongside other unaffiliated third parties who are also similarly purchasing or selling securities, (ii) the fees or other compensation that are being charged to the Company are also being charged to the unaffiliated third parties, and (iii) the amount of securities being purchased or sold by the Company does not exceed 50% of the total amount of securities being purchased or sold by the Company and the unaffiliated third parties. Applicants assert that compliance with section 17(e) would prevent a Company from participating in a transaction in which DLJ, for other business reasons, does not wish it to appear as if the Company is being treated in a more favorable manner (by being charged lower fees) than unaffiliated third parties also participating in the transaction. Applicants assert that the requirements listed above ensure that the fees or other compensation paid by a Company to a DLJ entity are those negotiated at arm's length with unaffiliated third parties, and that the unaffiliated third parties have as great or greater interest as the Company in the transaction as a whole.

10. Applicants also request an exemption from rule 17e–1 to the extent necessary to permit each Company to comply with rule 17e–1 without the necessity of having a majority of the directors of the Manager who are not ''interested persons'' take such actions and make such approvals as are set forth in rule 17e–1. Applicants state that since all the directors of the Manager will be affiliated persons, without the relief requested, a Company could not comply with rule 17e–1. Applicants state that each Company will comply with rule 17e–1 by having a majority of the directors of the Company take such actions and make such approvals as are set forth in rule 17e–1. Applicants assert that each Company will, except for the requirements of such approvals by ''not interested'' persons, otherwise comply with all other requirements of rule 17e–1 for transactions subject to the rule.

11. 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. Rule 17f–1 under the Act specifies the requirements that must be satisfied for a registered management investment company to use a broker-dealer as custodian. Applicants request an exemption from section 17(f) of the Act and rule 17f–1 thereunder to the extent necessary to permit DLJ to act as custodian without a written contract. Applicants assert that because there is such a close association between the Companies and DLJ, a written contract would cause a burden and expense where none is necessary. 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.

12. 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. Rule 17g–1 requires a majority of the board of directors of the registered investment company who are not interested persons to approve periodically the bond. Applicants request an exemption from section 17(g) of the Act and rule 17g–1 thereunder to permit the Manager's officers and directors, who may be deemed interested persons, to take actions and make the determinations set forth in the rule.

13. Section 17(j) and rule 17j–1 thereunder require that every registered investment company adopt a written code of ethics requiring that every access person of the investment company report to the investment company with respect to transactions in any security in which the access person has, or by reason of the transaction acquires, any direct or indirect beneficial ownership in the security. Applicants request an exemption from section 17(j) and rule 17j–1 (except rule 17j–1(a)) because the requirements contained therein are burdensome and unnecessary in this case. Applicants believe that requiring each Company 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 Participants in such Company by virtue of their common association in DLJ, and the substantial and largely overlapping protections afforded by the conditions with which such Company has agreed to comply.

14. Sections 30(a), 30(b), and 30(e), and the rules thereunder, 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 Company and would entail administrative and legal costs that outweigh any benefit to the Participants in such Company. Applicants state that the pertinent information contained in such filings will be furnished to the Participants in a Company, the only class of people truly interested in such material. Applicants state that in view of the community of interest among all parties concerned with a Company and the fact that Interests in such Company are not available to the public, but rather a specific group of people, it would seem that the protection afforded by sections 30(a) and (b) (*i.e.*, public dissemination of information to insure orderly markets and equality of information among the public) is not relevant to such Company or its operations. An exemption is requested to the extent necessary to permit each Company to report annually to its Participants in the manner described above.

15. Section 30(h) of the Act 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 1934 Act. Applicants state that, as a result, the Manager of each Company and others who may be deemed members of an advisory board of such Company may be required to file Forms 3, 4, and 5 with respect to their ownership of Interests in such Partnership. Applicants assert that the purpose intended to be served by section 30(h) is not apparent because there will be no trading market and the transfers of Interests will be 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 Company is a party (the ''Section 17 Transactions'') will be effected only if the Manager determines that: (i) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Members of such Company and do not involve overreaching of such Company or its Members on the part of any person concerned; and (ii) the transaction is consistent with the interests of the Members of such company, such Company's organizational documents, and such Company's reports to its Members. In addition, the Manager of each Company will record and preserve a description of such affiliated transactions, the Manager's findings, the information or materials upon which the Manager's findings are based, and the basis therefor. All records relating to an investment program will be maintained until the termination of such investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[5]

2. In connection with the Section 17 Transactions, the Manager of each Company 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 Company, or any affiliated person of such a person, promoter, or principal underwriter.

3. The Manager of each Company will not invest the funds of such Company 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 Company and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (i) gives such Manager sufficient, but not less than one day, notice of its intent to dispose of its investment; and (ii) refrains from disposing of its investment unless such Company has the opportunity to dispose of such Company's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term ''Co-Investor'' with respect to any Company means any person who is: (i) An ''affiliated person'' (as such term is defined in the Act) of such Company (other than a Third Party Fund); (ii) DLJ; (iii) an officer or director of DLJ; or (iv) a company in which the Manager 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: (i) 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, or to a direct or indirect wholly-owned subsidiary of its Parent; (ii) to immediate family members of such Co-Investor or a trust or other investment vehicle established for any such family member; (iii) 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; (iv) 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 (v) 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 national securities exchange or a national market system for securities.

4. Each Company and the Manager will maintain and preserve, for the life of such Company 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 Participants in such Company, and each annual report of such Company required to be sent to such Participants, and agree that all such records will be subject to examination by the SEC and its staff.[6]

5. The Manager of each Company will send to each Participant in such Company who had an interest in any capital account of such Company, at any time during the fiscal year then ended, Company financial statements audited by such Company's independent accountants. At the end of each fiscal year, the Manager will make a valuation or have a valuation made of all of the assets of the Company 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 Company. In addition, within 120 days after the end of each fiscal year of each Company or as soon as practicable thereafter, the Manager of such Company will send a report to each person who was a Participant in such Company at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Participant of his or its federal and state income tax returns and a report of the investment activities of such Company during such year.

6. In any case where purchases or sales are made by a Company from or to an entity affiliated with such Company by reason of a 5% or more investment in such entity by a DLJ director, officer, or employee, such individual will not participate in such Company'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. 97–14209 Filed 5–30–97; 8:45 am]

BILLING CODE 8010–01–M

[5] Each Company will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[6] Each Company will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26720]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

May 23, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 16, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(ea) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the