

quarter beginning July 1, 1997, 31.0 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 69.0 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.
Dated: May 28, 1997.

Beatrice Ezerski,

Secretary to the Board.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22693; 812-10444]

Compass Capital Funds et al.; Notice of Application

May 29, 1997.

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

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

APPLICANTS: Compass Capital Funds, on behalf of its existing and future portfolio series (the "Compass Funds"); Securities Lending Trust (the "Trust"), on behalf of its General Money Market Fund (the "Money Fund"), and U.S. Government Securities Money Market Fund (the "Government Money Fund"), and each future portfolio series of the Trust (collectively, the "Investment Funds"); PNC Asset Management Group, Inc. (the "Adviser"); PFPC Inc. (the "Trustee"); PNC Bank, National Association ("PNC Bank," and collectively with the Trust, the Adviser, and the Trustee, the "Trust Applicants"); any entity which may be controlled by or under common control with PNC Bank (the "PNC Entities"); any other registered investment company or portfolio series thereof which currently is or in the future may be advised by the Adviser or PNC Bank, or any other entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with the Adviser or PNC Bank, that may participate from time to time as a lender in the securities lending program (the "Program") administered by PNC Bank (together with the Compass Funds, the "Affiliated Lending Funds"); and each other registered investment company or portfolio series thereof that may

participate from time to time as a lender in the Program (the "Other Lending Funds," and together with the Affiliated Lending Funds, the "Lending Funds").¹
RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) granting an exemption from section 17(a), under rule 17d-1 to permit certain transactions in accordance with section 17(d) and rule 17d-1, and under section 6(c) granting an exemption from section 17(e).

SUMMARY OF APPLICATION: Trust Applicants request an order to permit (a) The Lending Funds to use cash collateral received from the borrowers of their portfolio securities to purchase shares of the Trust, an affiliated private investment company, pursuant to the Program; (b) the Lending Funds to pay PNC Bank, and PNC Bank to accept, fees for acting as lending agent with respect to securities lending transactions by the Lending Funds; and (c) certain joint transactions incident to the Program. In addition, PNC Bank requests an order to permit PNC Bank or any PNC Entity (a) To engage in principal transactions in securities with the Other Lending Funds that are affiliated persons of PNC Bank or any PNC Entity solely because they hold 5% or more of the securities of an Investment Fund; and (b) to receive fees or commissions from such Other Lending Funds for acting as broker or agent in connection with the purchase or sale of securities for the Other Lending Funds.

FILING DATES: The application was filed on November 21, 1996, and amended on April 2, 1997, and May 27, 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 23, 1997, and should be

¹ From time to time, it is possible that the Adviser, PNC Bank or an entity controlling, controlled by, or under common control with the Adviser or PNC Bank may serve as the investment adviser for certain portfolio series of a particular registered investment company, and that other portfolio series of that investment company could be advised by other entities. In such a circumstance, if the portfolio series at issue is advised by the Adviser, PNC Bank, or an entity controlling, controlled by, or under common control with the Adviser or PNC Bank, the portfolio series (and the investment company) will be considered an Affiliated Lending Fund, whereas, if the portfolio series at issue is not advised by the Adviser, PNC Bank, or an entity controlling, controlled by, or under common control with the Adviser or PNC Bank, the portfolio series (and the investment company) will be considered an Other Lending Fund.

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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o PNC Bank, National Association, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942-0526, or Mary Kay Frech, 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. Compass Funds, a registered investment company organized as a Massachusetts business trust, is composed of various equity, fixed income, and money market portfolio series. It is the only Affiliated Lending Fund that currently intends to lend portfolio securities.² The Adviser, a wholly-owned indirect subsidiary of PNC Bank Corp., is an investment adviser registered under the Investment Advisers Act of 1940. The Adviser (or a control affiliate thereof) serves or will serve as the investment adviser to the Affiliated Lending Funds.

2. The Trust is organized as a Delaware business trust and will initially consist of two portfolio series: the Money Fund and the Government Money Fund.³ It intends to operate as a

² All existing Affiliated Lending Funds that currently intend to rely on the requested relief to permit the Lending Funds to pay and PNC Bank to accept fees based on a share of the revenue generated from securities lending transactions pursuant to the Program have been named as parties to the application. Certain other Affiliated Lending Funds, or portfolio series thereof, for which the Adviser or PNC Bank, or any entity controlling, controlled by, or under common controls with the Adviser or PNC Bank, acts as investment adviser do not presently intend to rely on that portion of the requested relief. Any such Affiliated Lending Fund, or portfolio series thereof, however, may do so in the future, but only in accordance with the terms and conditions described in the application. In addition, any Affiliated Lending Fund that authorizes investment in shares of the Trust in the future and intends to rely on the requested relief will do so only in accordance with the terms and conditions described in this application.

³ The Money Fund's investments may include a variety of short-term instruments that are available in the money markets, and the Government Money

private investment company excepted from the definition of investment company under section 3(c)(1) or section 3(c)(7) of the Act.

3. The Trustee, a Delaware corporation, is a wholly-owned indirect subsidiary of PNC Bank Corp., that will serve as the sole trustee of the Trust and oversee its operations. The Trustee will receive compensation for the Trust for providing accounting and other administrative services to the Trust. The Adviser will, subject to the supervision of the Trustee, act as the investment adviser to the Trust. The Adviser will, among other things, determine the securities to be purchased, retained, or sold by the Investment Funds, and place orders for the purchase and sale of such securities. Neither the Adviser nor any affiliated person thereof, as defined in section 2(a)(3) of the Act, will receive any advisory fee from the Trust for the investment advisory services provided by the Adviser to the Trust.

4. PNC Bank, a wholly-owned indirect subsidiary of PNC Bank Corp., is a member bank of the Federal Reserve system and is regulated by the Office of the Comptroller of the Currency. PNC Bank serves as custodian or sub-custodian for each of the Lending Funds. PNC Bank also will serve as custodian of the Trust's assets, but will not receive a custodial fee from the Trust for those services.

5. PNC Bank administers the Program and, pursuant to securities lending customer agreements (the "Customer Agreements") covering the respective Lending Funds, act as the securities lending agent for each of the Lending Funds. Each Lending Fund will be authorized to seek additional income by lending portfolio securities. In addition, each Lending Fund's board of directors, including a majority of the directors who are not "interested persons," within section 2(a)(19) of the Act, will initially approve the Program and will monitor it on an ongoing basis. The Customer Agreements will make clear that the Lending Funds (and their investment advisers) retain the ultimate authority regarding the lending of portfolio securities, and that PNC is

subject to their direction in carrying out its responsibilities under the Program.⁴

6. Under the Program, PNC Bank will enter into agreements (the "Securities Loan Agreements") with certain entities (the "Borrowers") that wish to borrow portfolio securities owned by the respective Lending Funds. PNC Bank may enter into Securities Loan Agreements on behalf of a particular Lending Fund only with Borrowers set forth in a list approved by that Lending Fund. PNC Bank has the discretion to refuse to lend securities to any Borrower on the list. Pursuant to the Securities Loan Agreements, PNC Bank delivers portfolio securities to the Borrowers, who agree to return such securities on demand within three business days. The Lending Funds (a) remain the owner of securities that are loaned to a Borrower, (b) retain the right to receive from the Borrower the economic equivalent of any distributions made with respect to those securities, and (c) have the power to terminate a loan at any time. PNC Bank will monitor corporate actions with respect to securities loaned by the Lending Funds and will reallocate or terminate loans as necessary and to the extent possible to enable a Lending Fund to vote its portfolio securities.

7. As collateral for the securities loaned, PNC Bank is authorized to accept cash, and may also upon consent of a Lending Fund accept other types of instruments such as U.S. Government securities or irrevocable letters of credit. With respect to securities loans that are collateralized by assets other than cash, the Lending Fund involved receives a loan fee paid by the Borrower equal to a percentage of the market value of the loaned securities as specified in the Securities Loan Agreement.

Alternatively, with respect to securities loans collateralized by cash, the Borrower is entitled to receive a fixed cash collateral fee based on the amount of cash collateral, and the Lending Fund will be compensated on the spread between the net amount earned on the investment of the cash collateral and the Borrower's cash collateral fee. With respect to Affiliated Lending Funds, PNC Bank currently is compensated on a transaction fee basis depending upon the number and type of transactions it performs and the type of securities loaned, plus a flat fee for accounting and recordkeeping. With respect to the Other Lending Funds and other

participants in the Program, PNC Bank currently may be compensated based on a portion of the loan or fee spread.

8. Subject to receipt of the requested relief, PNC Bank intends to propose to the boards of directors of the Affiliated Lending Funds that its compensation for its lending agent services be based upon a pre-negotiated percentage of the loan fee or portion of the return on the investment of cash collateral received by an Affiliated Lending Fund with respect to each loan. The extent to which PNC Bank will be compensated for acting as lending agent will be set forth in the Customer Agreement.

9. Applicants anticipate that in most instances collateral will consist of cash. In order to enhance the return on the securities lending arrangements for the respective Lending Funds, the Customer Agreements authorize and instruct PNC Bank to invest the cash collateral on behalf of the Lending Funds. Each Customer Agreement sets forth specific written investment parameters, including a listing of eligible types of investments, which may include shares of both affiliated and unaffiliated private investment companies. PNC Bank is required to adhere to the parameters established by a Lending Fund in investing cash collateral on behalf of the Lending Fund.

10. Trust Applicants request an order to permit the Lending Funds to use the cash collateral received from the Borrowers to purchase and redeem shares of the Trust ("Shares"). By investing cash collateral in Shares, Trust Applicants anticipate that the Lending Funds will be able to reduce transaction costs, create more liquidity, enjoy greater returns on their cash collateral, and achieve greater diversification with respect to investment of cash collateral.

11. Shares of the Trust may be offered to the Lending Funds and other participants in the Program in reliance on the exemption provided by Regulation D under the Securities Act of 1933. The Trust does not presently propose to make a public offering of Shares or other securities. Shares will have no voting rights, and may not be transferred without the consent of the Trustee. The Trust will offer daily redemption of Shares at the current net asset value per Share. Shares will not be subject to any sales load, redemption fee, asset-based sales charge or service fee.

12. At the present time, the Other Lending Funds may engage in principal transactions with PNC Bank or a PNC Entity, or PNC Bank or a PNC Entity may act as a broker or agent for the Other Lending Funds. However, to the extent that an Other Lending Fund

Fund's investments may include securities that are issued or guaranteed by the U.S. government or its agencies or instrumentalities, and repurchase agreements related thereto. Both the Money Fund and the Government Money Fund intend to use the amortized cost method of valuation as defined in rule 2a-7 of the Act and to comply with the maturity, quality and diversification requirements set forth in paragraphs (c)(2), (c)(3), and (c)(4), paragraph (d) of the rule. None of the Investment Funds will purchase shares of any registered investment company.

⁴ The duties to be performed by PNC Bank as lending agent with respect to any Affiliated Lending Fund will not exceed the parameters set forth in *Norwest Bank Minnesota, N.A.* (pub. avail. May 25, 1995), except to the extent that the staff of the Division of Investment Management should later modify such parameters.

acquires 5% or more of the securities of an Investment Fund, sections 17(a) and 17(e) of the Act could operate to limit or prohibit trading relationships that currently exist or in the future may exist between PNC Bank or a PNC Entity and the Other Lending Funds. Accordingly, PNC Bank requests an order to permit PNC Bank or any PNC Entity to (a) engage in principal transactions in securities with the Other Lending Funds, and (b) receive fees or commissions from the Other Lending Funds for acting as agent or broker in connection with the purchase or sale of securities for the Other Lending Funds, in each case irrespective of any affiliation that may arise because of investment by the Other Lending Funds in Shares.

Applicants' Legal Analysis

A. Sections 17(a) and 17(b)

1. Sections 17(a) (1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as a principal, to sell any security to, or purchase any security from, such registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling or controlled by, or under common control with, such other person, and an "affiliated person" of an investment company to include any investment adviser thereof. Section 2(a)(9) of the Act states that "control" means the power to exercise a controlling influence over the management or policies of a company, and that control is presumed to exist in situations in which an entity, directly or indirectly through another controlled company, beneficially owns more than 25% of a company's voting securities. By virtue of serving as the investment adviser for the Affiliated Lending Funds, the Adviser is an "affiliated person" of such funds. In addition, the Adviser and the Trustee may be considered affiliated persons of each other because, as indirect wholly-owned subsidiaries of PNC Bank Corp., they are under common control. The Trustee in turn may be deemed to control the Trust by virtue of its position as sole trustee of the Trust. Therefore, the Trust may be considered to be an affiliated person of an affiliated person of the Affiliated Lending Funds and the sale of Shares to the Affiliated Lending Funds, and the redemption of such Shares, could be prohibited under section 17(a) unless the requirements of section 17(b) are satisfied. Moreover, to the extent that

the Trust's securities are deemed to be "voting securities" for purposes of the Act, and to the extent that a particular Other Lending Fund acquires 5% or more of an Investment Fund's securities, the Other Lending Fund could be deemed an affiliated person of such Investment Fund, and thus prohibited from engaging in further purchases or redemptions from the Investment Fund.

2. Because PNC Bank Corp. could be deemed to control PNC Bank, the PNC Entities, and the Trust, each such entity could be deemed to be under common control, and thereby an affiliated person of each other entity. In addition, PNC Bank and the PNC Entities could be deemed affiliated persons of affiliated persons of an Other Lending Fund that becomes an affiliated person of an Investment Fund through the acquisition of 5% or more of the securities of the Investment Fund. Therefore, once the Trust is established, the provisions of sections 17(a)(1) and 17(a)(2) technically could prohibit PNC Bank or a PNC Entity from selling securities to or purchasing securities from certain Other Lending Funds on a principal basis.

3. Section 17(b) of the Act 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 registered investment company concerned, and the general purposes of the Act. Because section 17(b) could be interpreted to exempt only a single transaction, applicants also are seeking relief pursuant to section 6(c) of the Act to the extent necessary to permit the investment of cash collateral in Shares, and the principal transactions in securities between PNC Bank or the PNC Entities, and the Other Lending Funds.⁵

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Trust Applicants believe that the requested relief is appropriate under section 6(c) for the same reasons that it is appropriate under 17(b).

5. Trust Applicants submit that the terms of the proposed transactions

regarding the purchase of Shares, as they relate to the respective Lending Funds, are reasonable and fair and consistent with the general purpose of the Act as well as with the policies of the respective Lending Funds. For the same reasons, Trust Applicants believe that the proposed transactions are in the best interests of the Lending Funds and their shareholders.

6. The Lending Funds will be treated like any other shareholders in the Trust and will purchase and redeem Shares on the same terms and on the same basis, including price, as Shares are purchased and redeemed by all other shareholders of the Trust. Shareholders of the Lending Funds will not be required to absorb a second tier investment advisory fee as a result of an investment in the Trust, because the Adviser will not charge the Trust for providing investment advisory services. Permitting the Lending Funds to invest cash collateral in the Trust enables them to invest in a vehicle that is designed to be similar to a registered investment company in terms of the liquidity, diversification, and quality of its investments at a cost that is expected to be significantly lower than the cost that is typically incurred when investing in a registered investment company. In addition, applicants state that cash collateral from loans by Lending Funds that are money market funds will not be used to acquire shares of any Investment Fund that does not comply with the requirements of rule 2a-7 under the Act. Finally, applicants state that because the Trust will comply with certain provisions and interpretations of the Act relating to the diversification, liquidity, and quality of portfolio securities, as well as major substantive provisions of the Act relating to prohibitions on affiliated transactions, leveraging and senior securities, and rights of redemption, shareholders of the Lending Funds will not be disadvantaged or subject to potential overreaching.

7. PNC Bank believes that, as discussed below, it is in the best interests of the public and consistent with the protection of investors and the purposes intended by the policies and provisions of the Act to permit the continuation of existing or future trading relationships between PNC Bank or the PNC Entities, and the Other Lending Funds.

8. Applicants submit that no element of self-dealing would be involved in the principal transactions between PNC Bank or a PNC Entity and an Other Lending Fund that acquires 5% or more of an Investment Fund. Applicants believe that each transaction between an

⁵ See *Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

Other Lending Fund and PNC Bank or a PNC Entity will be the product of arms-length bargaining, because each Other Lending Fund has its own investment adviser or sub-adviser that is not controlled by or under common control with PNC Bank and that, in economic reality, may be a competitor of PNC Bank or the PNC Entity involved. In addition, applicants believe that because the interests of the Other Lending Fund's investment advisers and sub-advisers are solely and directly aligned with those of the Other Lending Funds (to which the advisers have fiduciary responsibilities), it would be reasonable to conclude that the consideration to be paid to or received by the Other Lending Funds in connection with a principal transaction with PNC Bank or a PNC Entity will be reasonable and fair.

B. Section 17(d) and Rule 17d-1

1. Section 17(d) of the Act and rule 17d-1 thereunder prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which such investment company participates.

2. The Adviser, as investment adviser to the Affiliated Lending Funds, is an affiliated person of such funds. Moreover, because PNC Bank and the Adviser are each indirect wholly-owned subsidiaries of PNC Bank Corp., they may be deemed to be under common control and therefore affiliated persons, and PNC Bank may be deemed an affiliated person of an affiliated person of each such Affiliated Lending Fund. A lending agent agreement between an investment company and an affiliated person of such investment company under which compensation is based on a share of the revenue generated by the lending agent's efforts may be a "joint enterprise or other joint arrangement or profit sharing plan." Consequently, applicants seek exemptive relief to permit PNC Bank, as lending agent, to receive a percentage of the revenue generated by an Affiliated Lending Fund's participation in the Program.

3. As noted above, Other Lending funds that acquire 5% or more of an Investment Fund's securities may be deemed affiliated persons of the Investment Fund. PNC Bank Corp. indirectly owns all of the voting securities of PNC Bank and of the Trustee, and, therefore, could be deemed to control both entities. Moreover, because the Trustee may be

deemed to control the Trust, PNC Bank and the Trust could be deemed to be affiliated persons, and PNC Bank could be deemed to be an affiliated person of an affiliated person of the Other Lending Fund. Thus, section 17(d) and rule 17d-1 could operate to prohibit PNC Bank from receiving a percentage of the revenue generated through the participation of the Other Lending Funds in the Program.

4. Applicants also state that it is possible that the Adviser, PNC Bank, or an affiliate thereof may serve as the investment adviser or sub-adviser for certain portfolio series of a particular investment company, while other portfolio series of that investment company could be advised by entities that are not affiliated with the Adviser, PNC Bank, or an affiliate thereof. Applicants note that one or more of the portfolio series may participate in the Program, including portfolio series advised by entities that are not affiliated with the Adviser, PNC Bank or an affiliate thereof. Each portfolio series of the investment company could be deemed to be under common control and thus an affiliated person of each other portfolio series because the investment company's board of directors governs each portfolio series. PNC Bank would be an affiliated person of any portfolio series for which it acted as investment adviser, and an affiliated person of an affiliated person (or a second-tier affiliate) of those portfolio series for which it did not act as investment adviser. As a result, the prohibitions of section 17(d) and rule 17d-1 thereunder may apply to the activities involving such portfolio series and PNC Bank, including PNC Bank's activities as lending agent and its receipt of a share of the revenue from lending activities.

5. Rule 17d-1 permits the SEC to issue an order with respect to a joint transaction. In passing on applications for such orders, the SEC is to consider whether the company's participation in the proposed transaction 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.

6. Applicants propose that each Affiliated Lending Fund will adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with PNC Bank, as lending agent, will be fair:

(a) In connection with the approval of PNC Bank as lending agent for an Affiliated Lending Fund and implementation of the proposed fee arrangement, a majority of the board of

directors (including a majority of the directors who are not "interested persons" within the meaning of the Act) will determine (i) the contract with PNC Bank is in the Best interests of the Affiliated Lending Fund and its shareholders; (ii) the services to be performed by PNC Bank are required for the Affiliated Lending Fund; (iii) the nature and quality of the services provided by PNC Bank are at least equal to those provided by others offering the same or similar services; and (iv) the fees for PNC Bank's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each Affiliated Lending Fund's contract with PNC Bank for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the board of directors (including a majority of the board of directors who are not "interested persons" within the meaning of the Act) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby PNC Bank will be compensated as lending agent based on a percentage of the revenue generated by an Affiliated Lending Fund's participation in the Program, the board of directors will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the board of directors in making the findings referred to in paragraph (a) above.

(d) The board of directors, including a majority of the directors who are not "interested persons" within the meaning of the Act, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application, and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Affiliated Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application or otherwise followed in connection with lending securities pursuant to the Program, and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of

the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

7. The Affiliated Lending Funds and potentially the Other Lending Funds (by purchasing and redeeming Shares), the Adviser (by managing the portfolio securities of the Affiliated Lending Funds and the Trust at the same time that the Affiliated Lending Funds' cash collateral is invested in Shares), PNC Bank (by acting as lending agent, investing cash collateral in Shares and receiving a portion of the revenue generated by securities lending transactions), the Trust (by selling Shares to and redeeming them for the Lending Funds) and the Trustee (by serving as trustee of and providing other services to the Trust at the same time that the Trust sells Shares to and redeems them from the Lending Funds), also could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d-1 thereunder. Applicants state that the Lending Funds will invest in Shares on the same basis as any other shareholder. Applicants argue that all investors in Shares will be subject to the same eligibility requirements imposed by the Trust and that all Shares will be priced in the same manner and will be redeemable under the same terms. Additionally, applicants argue that due to the lower expenses incurred by the Trust, investing cash collateral in the Trust is expected to offer returns to the Lending Funds superior to those that could be attained by investing in a registered investment company, whether affiliated or unaffiliated, while still offering the benefits of investing in a registered investment company in terms of liquidity, diversity, and quality of investments.

C. Sections 6(c) and 17(e)

1. Section 17(e)(1) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, when acting as agent, to accept from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property to or for such registered company, except in the course of such person's business as an underwriter or broker. Section 17(e)(2) of the Act makes it unlawful for any affiliated person of a registered

investment company, or any affiliated person of such person, acting as broker in connection with the sale of securities to or by such registered investment company, to receive from any source a commission for effecting such transaction which exceeds (a) the usual and customary broker's commission if the sale is effected on a securities exchange, or (b) 2 per centum of the sales price if the sale is effected in connection with a secondary distribution of such securities, or (c) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected.

2. Banks are specifically excluded from the definition of "broker" in section 2(a)(6) of the Act, and thus not covered by the exception contained in section 17(e)(1) to the extent they are acting in a brokerage capacity. Therefore, PNC Bank or any PNC Entity which becomes affiliated with an Other Lending Fund through the Trust, but which is a bank, could be prohibited from acting in a brokerage or similar capacity for the Other Lending Fund.

3. Rule 17e-1 provides a safe harbor from the prohibition contained in section 17(e). Rule 17e-1 provides that, for purposes of section 17(e)(2)(A) of the Act, a commission shall be deemed as not exceeding the usual and customary broker's commission, if certain procedures are followed. These procedures include the requirement in rule 17e-1(b)(3) that a registered investment company's board of directors, including a majority of directors who are not "interested persons" under the Act, determines, no less frequently than quarterly, that all transactions effected pursuant to the rule comply with procedures which are reasonably designed to provide that the brokerage commission is consistent with the standards set forth in the rule. Applicants submit that while PNC Entities that qualify as "brokers" under the Act could rely on rule 17e-1 in effecting transactions for Other Lending Funds, compliance by those funds with the rule's provisions is unnecessary and unduly burdensome, given that the affiliation between the Other Lending Funds and PNC Bank or the PNC Entities is a technical one, arising solely through the mechanism of the Trust.

4. Applicants submit that section 17(e) was designed to address the concern raised in section 1(b)(2) of the Act, where Congress determined that the national public interest and the interests of investors are adversely affected when investment companies are organized, operated, managed, or their portfolio securities are selected, in the interests of their affiliates, or of

brokers, dealers or underwriters. Applicants argue that Congress, in fashioning section 17(e), intended that a broker affiliated with a registered investment company receive no more than the ordinary stock exchange brokerage commission, and sought to eliminate any risk of self-dealing.

5. Applicants assert that brokerage or similar transactions by PNC Bank or a PNC Entity for the Other Lending Funds that may acquire 5% or more of the securities of an Investment Fund raise no possibility of self-dealing or any concern that these Other Lending Funds would be managed in the interest of PNC Bank or the PNC Entity. In each instance, PNC Bank or the PNC Entity would not have influence over the decisions made by the Other Lending Funds. Applicants submit that each transaction between an Other Lending Fund and PNC Bank or a PNC Entity would be the product of arms-length bargaining, because each Other Lending Fund has its own investment adviser or sub-adviser that is not controlled by or under common control with PNC Bank or a PNC Entity and that, in economic reality, may be a competitor of PNC Bank or the PNC Entity involved.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons discussed above, applicants submit that the proposed transactions meet the section 6(c) standard.

Applicants' Conditions

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

1. Except as set forth in the application, the securities lending program of each Affiliated Lending Fund will comply with all present and future applicable SEC staff positions regarding securities lending arrangements, *i.e.*, with respect to the type and amount of collateral, voting of loaned securities, limitations on the percentage of portfolio securities on loan, prospectus disclosure, termination of loans, receipt of dividends or other distributions, and compliance with fundamental policies.⁶

2. The approval of an Affiliated Lending Fund's board of directors,

⁶ See, e.g., *SIFE Trust Fund* (pub. avail. Feb. 17, 1982).

including a majority of directors who are not "interested persons" under the Act, shall be required for the initial and subsequent approvals of PNC Bank's service as lending agent for the Affiliated Lending Fund pursuant to the Program, for the institution of all procedures relating to the Program as it relates to the Affiliated Lending Fund, and for any periodic review of loan transactions for which PNC Bank acted as lending agent pursuant to the Program.

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

3. A majority of the board of directors of a Lending Fund (including a majority of the directors who are not "interested persons" within the meaning of the Act of such Lending Fund), will initially and at least annually thereafter determine that the investment of securities lending cash collateral in Shares of the Trust is in the best interests of the shareholders of the Lending Fund.

4. Investment in Shares of the Trust by a particular Lending Fund will be consistent with such Lending Fund's investment objectives and policies.

5. Investment in Shares of the Trust by a particular Lending Fund will be in accordance with the guidelines regarding the investment of securities lending cash collateral specified by the Lending Fund in the Customer Agreement. A Lending Fund's cash collateral will be invested in a particular Investment Fund only if that Investment Fund invests in the types of instruments that the Lending Fund has authorized for the investment of its cash collateral.

6. Each Investment Fund that uses the amortized cost method of valuation as defined in rule 2a-7 under the Act will maintain a portfolio that complies with the maturity, quality, and diversification requirements of rule 2a-7 (c)(2), (c)(3), (c)(4), and (d). A Lending Fund may only purchase Shares of an Investment Fund using the amortized cost method of valuation if the Adviser determines on an ongoing basis that such Investment Fund is in compliance with paragraphs (c)(2), (c)(3), (c)(4), (c)(6), and (d) of rule 2a-7. The Adviser shall preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which such determination was made. This record will be subject to examination by the SEC and the staff.

7. The Trust will comply as to each Investment Fund with the requirements of sections 17 (a), (d), and (e) and 18 of

the Act as if the Trust were a registered open-end investment company. With respect to all redemption requests made by a Lending Fund, the Trust will comply with section 22(e) of the Act. The Adviser shall, subject to approval by the Trustee, adopt procedures designed to ensure that the Trust complies with section 17 (a), (d), and (e), 18, and 22(e) of the Act. The Adviser will also periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii), and 31a-1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and the staff.

8. The net asset value per share with respect to Shares of the Trust will be determined separately for each Investment Fund by dividing the value of the assets belonging to the Investment Fund, less the liabilities of that Investment Fund, by the number of Shares outstanding with respect to the Investment Fund. Each Investment Fund that uses the amortized cost method of valuation as defined in rule 2a-7 under the Act will comply with rule 2a-7(c)(6), except that the Adviser, subject to the approval by the Trustee, shall adopt the procedures described in that provision and the Adviser shall monitor such procedures and take such other actions as are required to be or may be taken by a board of directors pursuant to that provision.

9. The Shares of the Trust will not be subject to a sales load, redemption fee, any asset-based sales charge, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers).

10. Each Lending Fund will purchase and redeem Shares of the Trust as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Trust. A separate account will be established in the shareholder records of the Trust for the account of each applicable Lending Fund.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22694; 812-10584]

State Street Research Financial Trust, et al.; Notice of Application

May 30, 1997.

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

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

APPLICANTS: State Street Research Financial Trust (the "Trust"), State Street Research Portfolios, Inc. (the "Company"), State Street Research & Management Company ("SSRM"), State Street Research Investment Services, Inc. ("SSRIS"), and GFM International Investors Limited ("GFM").

RELEVANT ACT SECTIONS: Order requested under section 17(b) to exempt applicants from the provisions of section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to permit a reorganization between a series of the Trust and a series of the Company.

FILING DATES: The application was filed on March 25, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is incorporated herein.

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 19, 1997, 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 5th Street, NW., Washington, DC 20549. Applicants: the Trust, SSRM, and SSRIS, One Financial Center, Boston, Massachusetts 02111; the Company, One Madison Avenue, New York, New York 10010; and GFM, 5 Upper Street Martins Lane, London WC2H 9EA, England.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942-0572, or Mercer E. Bullard, Branch Chief, at (202) 942-0564