

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-23006 Filed 8-28-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22796; 812-10420]

New England Funds Trust I, et al.; Notice of Application

August 22, 1997.

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

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from the provisions of section 15(a) of the Act and rule 18f-2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order permitting TNE Advisers, Inc. ("TNE Advisers") and New England Fund Management, L.P. ("NEFM"), as investment advisers of certain funds, to enter into sub-advisory contracts on behalf of the funds without receiving prior shareholder approval.

APPLICANTS: New England Funds Trust I, New England Funds Trust II, New England Funds Trust III, New England Cash Management Trust, New England Tax Exempt Money Market Trust (collectively, the "New England Funds"), New England Zenith Fund (collectively with the New England Funds, the "Trusts"), TNE Advisers, and NEFM (together with TNE Advisers, the "Advisers").

FILING DATES: The application was filed on November 12, 1996, and amended on July 1, 1997 and August 22, 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 September 16, 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 interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. New England Funds and NEFM, 399 Boylston Street, 4th Floor, Boston, Massachusetts 02116. New England Zenith Fund and TNE Advisers, 501 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, 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, 450 Fifth Street, N.W. Washington, D.C. 20549 (tel. 202-942-8090).

Applicants' Representations

1. Each of the New England Funds is organized as a Massachusetts business trust and registered under the Act as an open-end management investment company with one of more series. NEFM, a limited partnership, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). NEFM serves as investment adviser to each of the New England Funds (except New England Growth Fund Series).

2. New England Zenith Fund (the "Zenith Fund") is organized as a Massachusetts business trust and registered under the Act as an open-end management investment company with one or more series. The Zenith Fund serves as a funding vehicle for certain variable annuity and variable life insurance products issued by Metropolitan Life Insurance Company ("MetLife") and its subsidiary New England Life Insurance Company ("NELICO"). TNE Advisers is registered as an investment adviser under the Advisers Act. TNE Advisers serves as investment adviser for each series of the Zenith Fund (except the Capital Growth Series).

3. Each series for the Zenith Fund (except the Capital Growth Series) and each series of the New England Funds (except the New England Growth Fund Series) (together, the "Series") utilizes the adviser/subadviser management structure.¹ Under this two-tiered

¹ Applicants also request relief for any Series of the Trusts organized in the future, and any open-end management investment companies in the future advised by NEFM or TNE Advisers or by a person controlling, controlled by, or under common control with NEFM or TNE Advisers that operates in substantially the same manner as the Trusts and

structure, NEFM (in the case of the New England Funds) or TNE Advisers (in the case of the Zenith Fund) acts as each Series' investment adviser, delegating the day-to-day portfolio management for each Series to one or more sub-advisers.

4. The New England Funds have entered into an advisory agreement with NEFM, which states that NEFM will provide both portfolio management services and administrative services to the New England Funds. TNE Advisers has entered into an advisory agreement with the Zenith Fund, which states that TNE Advisers will provide both portfolio management services and administrative services for each Series of the Zenith Fund for which TNE Advisers is the adviser. NEFM and TNE Advisers are responsible for: (a) Evaluating existing and prospective sub-advisers; (b) submitting recommendations to the boards of trustees of the Trusts concerning sub-advisers to be engaged by the Series; (c) monitoring and reporting to the Trusts' boards concerning investment results of the sub-advisers; (d) monitoring the sub-advisers' compliance with the Series' investment objectives, policies, and restrictions; and (e) when appropriate, recommending that the trustees of the relevant Trust terminate the services of a Series' sub-advisers.

5. NEFM and TNE Advisers have entered into sub-advisory agreements with one or more advisory firms (sub-advisers) with respect to each Series, pursuant to which the sub-advisers provide day-to-day portfolio management services. Each sub-advisory agreement requires the relevant sub-advisers to manage the investment and reinvestment of the assets of the Series, subject to the supervision of either NEFM or TNE Advisers and oversight by the trustees. The sub-advisers' responsibilities include effecting portfolio transactions and reporting periodically to NEFM or TNE Advisers, their agents, and the trustees of the Trusts.

6. Under their advisory agreements, NEFM and TNE Advisers receive from the relevant Series compensation at a specified annual percentage of the corresponding Series' average daily net assets. NEFM and TNE Advisers, in turn, compensate the relevant sub-advisers at specified annual percentage rates of the Series' average daily net assets. The sub-advisory fee paid to the sub-advisers is payable by NEFM or TNE Advisers, and not by the Series.

7. The Advisers have contractual rights under their applicable advisory

complies with the conditions to the requested order as set forth in the application.

agreements to delegate their duties to provide administrative services to a sub-adviser or third party. The Advisers agree that no such Series will utilize the relief granted under the requested order until such time as the Advisers have waived such rights with respect to such Series. The Advisers, however, may continue to delegate to a third party routine accounting and legal functions (e.g., legal work performed in connection with periodic filings and other routine legal matters) that do not include establishing investment policies or the selection, evaluation, or termination of sub-advisers. The Advisers, under their advisory agreements, retain all responsibility for the performance of these delegated duties.

Applicants' Legal Analysis

1. Applicants request an exemption from section 15(a) of the Act and rule 18f-2 under the Act to permit NEFM and TNE Advisers to enter into new or amended agreements with sub-advisers without obtaining shareholder approval. Such relief would include any sub-advisory agreement necessitated because the prior sub-adviser was terminated as a result of an "assignment," as defined in section 2(a)(4) of the Act.

2. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f-2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

3. Applicants state that adviser/sub-adviser arrangements differ from conventionally managed mutual funds. Unlike conventional mutual funds, adviser/sub-adviser managed funds divide responsibility for general management and investment advice between the adviser and the sub-adviser. The adviser provides general management and administrative services to the funds, including monitoring the sub-adviser. The adviser selects the sub-adviser it believes is most likely to make portfolio securities selections that will achieve the funds' objectives. The sub-adviser, in turn, selects portfolio investments. Applicants believe that the shareholders in an adviser/sub-adviser fund rely on the fund's adviser to perform the selecting and monitoring of sub-advisers and to respond promptly to any

significant change in the sub-advisory services provided to the fund.

4. Applicants believe that without the ability to employ promptly a new sub-adviser, investors' expectation may be frustrated and the Trusts and their shareholders could be disadvantaged when a sub-adviser has resigned or has been terminated because its performance was unsatisfactory or where there has been an "assignment" of a sub-advisory agreement.

5. Applicants assert that the ability to enter into sub-advisory agreements without shareholder approval would enable the Trusts and their Series that employ an adviser/sub-adviser structure to act promptly upon the Adviser's recommendations with respect to the sub-adviser, as well as save the Series and their shareholders the expense of convening shareholder meetings. Applicants further assert that the Trusts' investors will be able to exercise control over their relationship with the Adviser because the Trusts' advisory agreements with NEFM or TNE Advisers, as applicable, will be subject to the shareholder voting requirements of section 15(a) of the Act.

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. Applicants state that the requested exemption is in accordance with the standards of section 6(c).

Applicants' Conditions

Applicants agree that the order shall be subject to the following conditions:

1. The Advisers will provide general management and administrative services to the Trusts, including overall supervisory responsibility for the general management and investment of the Trusts' securities portfolios that employ an adviser/sub-adviser structure, and subject to review and approval by each Trust's board with respect to its respective Series that employ an adviser/sub-adviser structure, will (i) set the Series' overall investment strategies; (ii) select sub-advisers; (iii) monitor and evaluate the performance of the sub-advisers; (iv) allocate, and when appropriate, reallocate a Series' assets among its sub-advisers in those cases where a Series has more than one sub-adviser; and (v) implement procedures reasonably designed to ensure that the sub-advisers comply with the relevant Trust's

investment objectives, policies, and restrictions.

2. Before a Series may rely on the order requested in the application, the operation of the Series in the manner described in the application will be approved by a majority of its outstanding voting securities,² as defined in the Act, or, in the case of a new Series whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by 4. below, by the sole shareholder before the offering of shares of such Series to the public.

3. Within 90 days after the hiring of any new sub-adviser or the implementation of any proposed material change in a sub-advisory agreement, the Trusts will furnish shareholders the information about a new sub-adviser or sub-advisory agreement that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new sub-adviser or any proposed material change in the sub-advisory agreement of a Series. The Series will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 ("Exchange Act"). The information statement also will meet the requirements of Item 22 of Schedule 14A under the Exchange Act. The Zenith Fund will ensure that the information statement is furnished to the unitholders of any separate account for which the Zenith Fund serves as a funding vehicle.

4. The Trusts will disclose in all prospectuses relating to any Series the existence, substance and effect of any order granted pursuant to the application. In addition, each Series will hold itself out to the public as employing the adviser/sub-adviser approach described in the application. The prospectus will prominently disclose that the adviser has ultimate responsibility to oversee sub-advisers and recommend their hiring, termination, and replacement.

² NELICO and MetLife are the legal owners of shares attributable to variable life insurance and variable annuity contracts issued by separate accounts of NELICO and MetLife. As such, they are required to vote their shares in accordance with the instructions received from the owners of variable life and variable annuity contracts issued by separate accounts that are registered under the Act. All Zenith Fund shares held by separate accounts that are registered under the Act for which no timely instructions are received are voted for, voted against, or withheld from voting on any proposition in the same proportion as the shares held in that separate account for all contracts for which voting instructions are received.

5. The Advisers will not enter into a sub-advisory agreement with any sub-adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, the advisers, or the Trusts other than by reason of serving as sub-adviser to one or more Series ("Affiliated Sub-Adviser") without such agreement, including compensation to be paid thereunder, being approved by the shareholders of the applicable Series.

6. At all times, a majority of the trustees of the Trusts will be persons each of whom is not an "interested person" of each of the Trusts (as defined in section 2(a)(19) of the Act) (the "Independent Trustees"), and the nomination of new or additional Independent Trustees will be committed to the discretion of then existing Independent Trustees.

7. When a sub-adviser change is proposed for a Series having an Affiliated Sub-Adviser, the trustees of the Trusts, including a majority of the Independent Trustees, will make a separate finding, reflected in such Trust's board minutes, that the change is in the best interests of the Series and its shareholders and does not involve a conflict of interest from which the Advisers or the Affiliated Sub-Adviser derives an inappropriate advantage.

8. No trustee or officer of the Trusts, or the Advisers will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such trustee or officer) any interest in a sub-adviser except for: (a) Ownership of interests in the Advisers or any entity that controls the Advisers; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a sub-adviser or an entity that controls, is controlled by, or is under common control with a sub-adviser.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-23007 Filed 8-28-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22797; International Series Release No. 1098; File No. 812-10376]

Tele-Communications International, Inc.; Notice of Application

August 22, 1997.

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

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

SUMMARY OF APPLICATION: Applicant Tele-Communications International, Inc. requests an order under section 6(c) of the Act that would permit applicant and its controlled companies to participate in certain foreign tele-media ventures without being subject to the provisions of the Act.

FILING DATES: The application was filed on October 2, 1996, and amended on June 30, 1997 and August 18, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 16, 1997 by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. General Counsel, Applicant, 5619 DTC Parkway, Englewood, CO 80111.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942-0571, 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 at the SEC's Public Reference Branch [450 Fifth Street, N.W., Washington, D.C. 20549; (202) 942-8090].

Applicant's Representations

1. Applicant, a Delaware corporation, was incorporated in 1994 as a wholly-owned subsidiary of Tele-Communications, Inc. ("TCI"), a Delaware corporation. TCI, through its subsidiaries and affiliates (other than applicant), is principally engaged in the construction, acquisition, ownership, and operation of cable television systems in the United States and the provision of cable and satellite-delivered video entertainment, information, and home shopping programming services to various distribution media.

2. Applicant was formed by TCI as a holding company for the purpose of consolidating TCI's international cable and telecommunications and certain of its international programming businesses under one corporation, pending an initial public offering of stock by applicant in mid-1995. Applicant was formed with its own management team, which largely consisted of those executive officers of TCI who had been responsible for the operations of TCI's international divisions. During the fourth quarter of 1994 and the first quarter of 1995, TCI contributed its ownership interests in substantially all of its international cable and telephony assets and certain of its international programming assets to applicant (the "TCI Contributions"). TCI currently owns approximately 85% of the outstanding shares of all series of common stock of applicant and approximately 92% of the combined voting power of all series of outstanding shares of common stock of applicant.

3. Applicant has expanded and built upon the assets it received through the TCI Contributions and has established ventures in new markets. Today applicant, directly and through joint ventures and controlled companies, is engaged in the business of acquiring, developing, operating, and managing broadband distribution, telecommunications, and programming businesses in selected markets outside the United States.

4. Applicant's assets are not held as passive or portfolio investments and are not traded for short-term profit. Applicant has never been a registered investment company (or subject to any analogous regulatory scheme in another jurisdiction) and has never been engaged in the business of investing, reinvesting, or trading in securities.

5. Applicant requests relief to permit applicant and each entity that is now or in the future controlled by, or under common control with, applicant (each, including applicant, a "Covered Entity") to engage, either directly or indirectly through subsidiaries, in certain foreign tele-media ventures without being subject to the provisions of the Act. For purposes of the application, applicant represents that "foreign tele-media venture" means any and all activities outside the United States involving: communications; media; the creation, storage and transmission of voice, video, or data; programming, including entertainment, news, information, and home shopping services; print media; broadband and satellite distribution; over the air broadcast; telecommunications; wireline or wireless distribution and telephony;