stored in the SFP is the primary risk to public health and safety.

The problems encountered by the licensee during the summer of 1998 have been examined by the NRC. As illustrated in Section II, the problems were not due to a lack of regulatory requirements. Therefore, the staff believes that the requirements of 10 CFR part 72, which address activities associated with an independent spent fuel storage installation (ISFSI), would not have been applicable to the decommissioning activities underway at HNP during the summer of 1998.

The second basis for the request concerns the safe storage of spent fuel at HNP. The staff's consideration of applying the requirements of 10 CFR part 72 at HNP is presented in Section IV, below. Therefore, the third request is granted.

IV. Application of 10 CFR Part 72 at HNP

The staff reviewed the requirements of 10 CFR part 72 and compared them with the requirements of 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' which currently apply to HNP. The scope of part 72, as stated in 10 CFR 72.2, is limited to the receipt, transfer, packaging, and possession of power reactor spent fuel and other radioactive materials associated with spent fuel storage. As a result, decommissioning activities under part 72 would apply only to the portion of the 10 CFR part 50 site licensed as an ISFSI. However, the licensee has not applied for a part 72 license to establish the SFP as an ISFSI. Furthermore, the licensee does not intend to decommission the SFP until after the Department of Energy takes possession of the spent fuel. In light of these facts, part 72 does not apply to HNP and, even if CYAPCO held a part 72 license, the decommissioning provisions of that part would not apply to the decommissioning activities currently underway at the facility. Because the HNP facility consists of contaminated and activated structures, systems, and components associated with a permanently defueled reactor as well as the SFP, the limited scope of part 72 is not sufficient to cover the full range of decommissioning activities at a power reactor facility such as HNP.

In contrast, the scope of 10 CFR part 50 applies to HNP and covers all the structures, systems, and components of a power reactor facility, including the SFP. Part 50 contains specific provisions for decommissioning power reactors in § 50.82, as well as other applicable sections. It follows that the decommissioning of HNP must proceed under 10 CFR part 50, at least until such time as the decommissioning activities at HNP fall completely within the scope of 10 CFR part 72 and the licensee applies for and obtains a part 72 license. As of now, the activities at HNP extend beyond the scope of part 72, and part 50 would continue to apply even if a licensed ISFSI were established at the site.

After considering the applicability of the regulations noted above, the staff concludes that 10 CFR part 72 does not apply to HNP at this time because the licensee does not possess an ISFSI licensed under part 72 and many of the decommissioning activities to be performed cannot be accommodated within the scope of part 72.

V. Decision

For the reasons stated herein, the petition is denied in part and granted in part. The requests to revoke or suspend the HNP operating license and to hold an informal public hearing in the vicinity of the site are denied. The request to consider application of the requirements of 10 CFR part 72 to HNP is granted. The staff's evaluation of the applicability of 10 CFR part 72 at HNP is presented in Section IV; however, the staff finds that part 72 does not apply to the decommissioning activities now underway at the plant.

The decision and the documents cited in the decision are available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the Local Public Document Room for HNP at the Russell Library, 123 Broad Street, Middletown, Connecticut.

In accordance with 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission for the Commission's review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 12th day of January 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1086 Filed 1–15–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23645; 812–11180]

Ivy Fund, et al.; Notice of Application

January 12, 1999.

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

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to implement a ''fund of funds'' arrangement. The fund of funds would invest in funds in the same group of investment companies, and in funds that are not part of the same group of investment companies in reliance on section 12(d)(1)(F) of the Act. The order also would permit the fund of funds to offer its shares to the public with a sales load that exceeds the 1.5% limit of section 12(d)(1)(F)(ii) of the Act.

APPLICANTS: Ivy Management, Inc. (''IMI''); Ivy Mackenzie Distributors, Inc. (''IMDI''); Mackenzie Financial Corporation (''MFC''); Ivy Fund, on behalf of its series (Ivy Asia Pacific Fund; Ivy Bond Fund; Ivy Canada Fund; Ivy China Region Fund; Ivy Developing Nations Fund; Ivy Global Fund; Ivy Global Natural Resources Fund; Ivy Global Science & Technology Fund; Ivy Growth Fund; Ivy Growth With Income Fund; Ivy International Fund; Ivy International Fund II; Ivy International Small Companies Fund; Ivy International Strategic Bond Fund; Ivy Money Market Fund; Ivy Pan-Europe Fund; Ivy South America Fund; Ivy US Blue Chip Fund; and Ivy US Emerging Growth Fund); and Mackenzie Solutions, on behalf of its series (International Solutions I—Conservative Growth; International Solutions II—Balanced Growth; International Solutions III—Moderate Growth; International Solutions IV—Long-Term Growth; and International Solutions V—Aggressive Growth).

FILING DATES: The application was filed on June 10, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 February 4, 1999, 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 notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: IMI, IMDI, Mackenzie Solutions, and Ivy Fund, 700 South Federal Highway, Boca Raton, FL 33432; MFC, 150 Bloor Street, West, Toronto, Ontario, M5S 3B5 Canada.

FOR FURTHER INFORMATION CONTACT: Timothy R. Kane, Senior Counsel, at (202) 942–0615, or Christine Y. Greenlees, 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 (telephone 202–942–8090).

Applicants' Representations

1. Ivy Fund and Mackenzie Solutions are Massachusetts business trusts registered under the Act as open-end management investment companies. Mackenzie Solutions consists of five series; Ivy Fund consists of 19. Ivy Fund and Mackenzie Solutions are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act.

2. IMI, registered under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser to 17 series of Ivy Fund. IMI is a wholly-owned subsidiary of Mackenzie Investment Management, Inc., which is a majority-owned subsidiary of MFC. MFC serves as investment adviser to two portfolios of Ivy Fund and is registered under the Advisers Act.

3. Applicants request relief to permit the series of Mackenzie Solutions and any other registered open-end management investment company created in the future that is part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as Mackenzie Solutions (collectively, the ''Asset Allocation Funds''), to purchase shares of series of Ivy Fund and other registered open-end management investment companies or series thereof, now existing or created in the future, that are part of the same ''group of investment companies,'' as so defined, as the Asset Allocation Funds (collectively, the ''Underlying Portfolios'').[1] The Asset Allocation Funds also would invest in other registered open-end management investment companies that are not part of the same group of investment companies as Mackenzie Solutions (the ''Other Portfolios'') in reliance on section 12(d)(1)(F) of the Act, discussed below. With respect to an Asset Allocation Fund's investment in Other Portfolios, applicants also seek an exemption from the sales load limitation in section 12(d)(1)(F) of the Act. Applicants state that the proposed structure of the Asset Allocation Funds will provide a consolidated and efficient means through which investors can have access to a comprehensive investment vehicle.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquire investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the SEC; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1) (F) or (G). Section 12(d)(1)(G)(ii) defines the term ''group of investment companies'' to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Asset Allocation Funds will invest in shares of the Other Portfolios, they cannot rely on the exemption from sections 12(d)(1) (A) and (B) afforded by section 12(d)(1)(G).

3. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. The Asset Allocation Funds will invest in Other Portfolios in reliance on section 12(d)(1)(F). If the requested relief is granted, shares of the Asset Allocation Funds will be sold with a sales load that exceeds 1.5%, subject to applicants' compliance with condition 3 of the application.

4. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

[1] Applicants request relief for each existing or future registered open-end management investment company or series of such a company that is part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as Mackenzie Solutions, and (1) is, or will be advised by IMI or by any entity controlling, controlled by, or under common control with IMI; or (2) for which IMDI or any entity controlling, controlled by, or under common control with IMDI serves as principal underwriter. Each existing registered open-end management investment company that intends to rely on the order is named as an applicant. Any registered open-end management investment company that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

5. Applicants request relief under section 12(d)(1)(J) of the Act from the limitation of sections 12(d)(1) (A) and (B) to permit the Asset Allocation Funds to invest in the Underlying Portfolios and from section 12(d)(1)(F) to permit the Asset Allocation Funds to sell shares to the public with a sales load that exceeds 1.5%.

6. Applicants state that the Asset Allocation Funds' investments in the Underlying Portfolios do not raise the concerns about undue influence that sections 12(d)(1) (A) and (B) were designed to address. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of sales charges or other fees.

7. The Asset Allocation Funds will invest in Other Portfolios only within the limits of section 12(d)(1)(F). Applicants believe that an exemption from the sales load limitation in that section is consistent with the protection of investors because applicants' proposed sales load limit would cap the aggregate sales charges of the Asset Allocation Fund and the Other Portfolio in which it invests. Applicants have agreed, as a condition to the relief, that any sales charges, asset-based distribution and service fees relating to the Asset Allocation Fund's shares, when aggregated with any sales charges, asset-based distribution and service fees paid by the Asset Allocation Fund relating to its acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Conduct Rules'').

B. Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Asset Allocation Funds and the Underlying Portfolios will be advised by IMI or MFC, its indirect parent. As a result, applicants submit that the Asset Allocation Funds and Underlying Portfolios may be deemed to be affiliated persons of one another by virtue of being under common control of IMI and MFC, or because the Asset Allocation Funds Own 5% or more of the shares of an Underlying Portfolio. Applicants state that purchases and redemptions of shares of the Underlying Portfolios by the Asset Allocation Funds could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if 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 request an exemption under section 6(c) and 17(b) of the Act to permit the Asset Allocation Funds to purchase and redeem shares of the Underlying Portfolios.

4. Applicants state that the terms of the proposed transactions will be reasonable and fair and will not involve overreaching because shares of Underlying Portfolios will be sold and redeemed at their net asset values. Applicants also state that the investment by the Asset Allocation Funds in the Underlying Portfolios will be effected in accordance with the investment restrictions of the Asset Allocation Funds and will be consistent with the policies as set forth in the registration statement of the Asset Allocation Funds.

Applicants' Conditions

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

1. All Underlying Portfolios will be part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the Asset Allocation Funds.

2. No Underlying Portfolios will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1((A) of the Act, except to the extent that such Underlying Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the SEC permitting such Underlying Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions. No Asset Allocation Fund will acquire securities of an Other Portfolio if, at the time of acquisition, the Other Portfolio owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. Any sales charges, distribution-related fees, and service fees relating to the shares of the Asset Allocation Funds, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Asset Allocation Funds relating to their acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

4. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Asset Allocation Funds, including a majority of the trustees who are not ''interested persons'' (as defined in section 2(a)(19) of the Act), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Asset Allocation Funds.

5. Each Asset Allocation Fund's investments in Other Portfolio will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

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

Margaret H. McFarland,

Deputy Secretary.

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