

System (FERS) disability benefit, and to notify the annuitant of any overpayment payable to OPM. It also notifies the annuitant of the responsibility to notify OPM if SSA benefits begin and consequences of non-notification.

Approximately 5,500 RI 98-7 forms will be completed annually. We estimate it takes approximately 5 minutes to complete the form. The annual burden is 458 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or email to [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov).

**DATES:** Comments on this proposal should be received by October 9, 2001.

**ADDRESSES:** Send or deliver comments to John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415-3520. and Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

#### FOR INFORMATION REGARDING

**ADMINISTRATIVE COORDINATION—CONTACT:** Donna G. Lease, Team Leader, Forms Analysis and Design, (202) 606-0623.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 01-22359 Filed 9-5-01; 8:45 am]

**BILLING CODE 6325-50-U**

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish period summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and Purpose of information collection:* Supplemental Information on Accident and Insurance; OMB 3220-0036.

Under section 12(o) of the Railroad Unemployment Insurance Act (RUIA), the Railroad Retirement Board is entitled to reimbursement of the sickness benefits paid to a railroad employee if the employee receives a sum or damages for the same infirmity for which the benefits are paid. Section

2(f) of the RUIA requires employers to reimburse the RRB for days in which salary, wages, pay for time lost or other remuneration is later determined to be payable. Reimbursements under section 2(f) generally result from the award of pay for time lost or the payment of guaranteed wages. The RUIA prescribes that the amount of benefits paid be deducted and held by the employer in a special fund for reimbursement to the RRB.

The RRB currently utilizes Form(s) SI-1c, (Supplemental Information on Accident and Insurance), SI-5 (Report of Payments to Employee Claiming Sickness Benefits Under the RUIA), ID-3s (Request for Lien Information), ID-3s-1, (Lien Information Under Section 12(o) of the RUIA), ID-3u (Request for Section 2(f) Information), ID-30k (Form Letter Asking Claimant for Additional Information on Injury or Illness), and ID-30k-1 (Request for Supplemental Information on Injury or Illness—3rd Party), to obtain the necessary information from claimants and railroad employers. The RRB proposes minor non-burden impacting editorial changes to all of the forms in the collection. Completion is required to obtain benefits. One response is requested of each respondent.

#### *Estimate of Annual Respondent*

*Burden:* the estimated annual respondent burden for this collection is as follows:

Form Nos.	Annual responses	Time (min.)	Burden (hrs.)
SI-1c .....	1,000	5	93
SI-5 .....	2,500	5	208
ID-3s .....	18,500	3	925
ID-3s.1 .....	500	3	25
ID-3u .....	1,500	3	75
ID-30k .....	2,000	5	208
ID-30k.1 .....	2,500	5	167
<b>Total .....</b>	<b>28,500</b>	<b>.....</b>	<b>1,691</b>

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments

should be received on or before November 5, 2001.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 01-22311 Filed 9-5-01; 8:45 am]

**BILLING CODE 7905-01-M**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25146; 813-252]**

### WS Investment Company, L.L.C. et al. Notice of Application

August 29, 2001.

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

**ACTION:** Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all

provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g) and (j)), section 30) (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under the Act.

#### SUMMARY OF THE APPLICATION:

Applicants request an order to exempt certain investment funds formed for the benefit of eligible current and former employees of Wilson Sonsini Goodrich & Rosati, Professional Corporation, and its affiliates from certain provisions of the Act. Each fund will be an "employees' securities company" as defined in section 2(a)(13) of the Act.

**Applicants:** WS Investment Company, L.L.C. (the "Investment Fund") and Wilson Sonsini Goodrich & Rosati, Professional Corporation (together with any business organization that results from a reorganization of Wilson Sonsini Goodrich & Rosati, Professional Corporation, into a different type of business organization or into an entity organized under the laws of another jurisdiction, "WSGR").

**Filing Dates:** The application was filed on March 27, 2000 and amended on August 28, 2001.

**Hearing or Notification of Hearing:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 24, 2001, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, 650 Page Mill Road, Palo Alto, CA 94304.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Senior Counsel, at (202) 942-0582, 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 Commission's Public Reference Branch,

450 Fifth Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

#### Applicants' Representations

1. WSGR is a law firm organized as a California professional corporation. WSGR and its "affiliates," as defined in rule 12b-2 under the Securities Exchange Act of 1934 (the "Exchange Act"), are referred to collectively as the "WSGR Group" and individually as a "WSGR entity." The shareholders of WSGR are referred to as "Members."

2. The Investment Fund is a Delaware limited liability company established pursuant to a limited liability company agreement. The applicants may in the future offer additional pooled investment vehicles identical in all material respects to the Investment Fund (other than investment objectives and strategies) (the "subsequent Funds") (together, the Investment Fund and the Subsequent Funds are referred to as the "Funds"). The applicants anticipate that each Subsequent Fund will also be structured as a limited liability company, although a Subsequent Fund could be structured as a limited partnership, corporation, trust or other business organization formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act. The Funds will operate as non-diversified, closed-end management investment companies. The Funds will be established to enable the Members and certain attorney and non-attorney employees of WSGR Group to participate in certain investment opportunities that come to the attention of WSGR Group. Participation as investors in the Funds will allow the Eligible Investors, as defined below, to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

3. WSGR or a wholly-owned subsidiary of WSGR will serve as the sole manager (the "Manager") or each Fund. The Funds will have one or more investment committees ("Investment Committees"), each member of which shall be a Member. The Manager or WSGR shall appoint the members of each Investment Committee. If the Manager is a wholly-owned subsidiary of WSGR, the members of each Investment Committee will be officers and/or directors of the subsidiary. The Manager or any person involved in the operation of the Funds will register as an investment adviser if required under the Investment Advisers Act of 1940, or the rules under that Act.

4. Interests in the Funds ("Interests") will be offered without registration in

reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act"), Regulation D under the Securities Act or rule 701 under the Securities Act, or any successor rule, and will be sold solely to Eligible Investors. Eligible Investors consist of "Eligible Employees," "Qualified Investment Vehicles," "Immediate Family Members," each as defined below, and WSGR entities. The term "Fund Investors" refers to Eligible Investors who invest in the Funds. Prior to offering Interests in a Fund to an individual, the Manager must reasonably believe that the individual is a sophisticated investor capable of understanding and evaluating the risks of participating in the Fund without the benefit or regulatory safeguards. An "Eligible Employee" is a person who is, at the time of investment, a current or former Member of WSGR or employee of WSGR Group who (a) meets the standards of an "accredited investor" set forth in rule 501(a)(5) or rule 501(a)(6) of Regulation D under the Securities Act, (b) is one of 35 or fewer employees of WSGR Group who meets certain salary and other requirements ("Category 2 investors"), or (c) is a lawyer employed by WSGR who purchase Interests pursuant to an offering under rule 701 under the Securities Act ("rule 701") ("Category 3 investors").

5. Each Category 2 investor will be an employee of WSGR Group, but not a lawyer employed by WSGR, who meets the sophistication requirements set forth in rule (506)(b)(2)(ii) of Regulation D under the Securities Act<sup>1</sup> and who (a) has a graduate degree, has a minimum of 3 years of business experience, has had compensation of at least \$150,000 in the preceding 12 month period, and has a reasonable expectation of compensation at a least \$150,000 in each of the 2 immediately succeeding 12 month periods, or (b) is a "knowledgeable employee," as defined rule 3c-5 under the Act, of the Fund (with the Fund treated as though it were a "Covered Company" for purposes of the rule). In addition, a Category 2 investor qualifying under (a) above will not be permitted to invest in any calendar or fiscal year (as determined by WSGR) more than 10% of his or her income from all sources for the immediately preceding calendar or fiscal year in one or more Funds.

6. Each Category 3 investor will be a lawyer employed by WSGR who reasonably expects to have compensation of at least \$120,000 in the

<sup>1</sup> Some or all Category 2 investors may purchase their Interests in an offering under rule 701 rather than under Regulation D.

next 12 months and who has a reasonable expectation of compensation of at least \$150,000 in each of the 2 immediately succeeding 12 month periods. (In addition, any Category 3 investors who is not a Member will not be permitted to invest in any calendar or fiscal year (as determined by WSGR) more than 10% (or 5%, if he or she has been employed as a lawyer for less than 3 years) of his or her reasonably expected income from all sources for that year in one or more Funds. Category 3 investors will purchase Interests pursuant to an offering under rule 701. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, WSGR will make available at no charge to potential Fund Investors the services of an independent third party ("Financial Consultant") qualified to provide advice concerning the appropriateness of investing in a Fund.

7. A Qualified Investment Vehicle is a trust or other entity the sole beneficiaries of which are Eligible Employees or their Immediate Family Members or the settlers and trustees of which consist of Eligible Employees or Eligible Employees together with Immediate Family Members.<sup>2</sup> Immediate Family Members include any parent, child, spouse of a child, spouse, brother or sister, and includes any step and adoptive relationships. A Qualified Investment Vehicle must be either (a) an accredited investor as defined in rule 501(a) of Regulation D or (b) an entity for which an Eligible Employee is a settlor and principal investment decisionmaker. An Immediate Family Member who purchases Interests must be an accredited investor as defined in rule 501(a)(5) or rule 501(a)(6) of Regulation D.

8. Each Fund may issue its Interests in series (each, a "Series" and collectively, the "Series") with new Series of Interests being offered from time to time. Each Series may be further divided into two or more separate classes (each, a "Class"), having such terms and conditions as the Manager may establish. Each Series will represent an interest in some or all of those Fund investments made by the Fund during a specified period of time (the "Investment Period"). Following the end of a Series' Investment Period, no new investment will be made for that

Series, although following a Series' Investment Period additional money may be contributed to an existing investment.

9. The Manager may determine, in its sole discretion, that in cases when the Investment Periods for two or more Series are open concurrently and when a limited amount of securities of an investee company is available, the Investment Committee for one Series (the "Mandatory Series") will have the right to determine whether, and to what extent, the Mandatory Series will invest in the securities prior to one or more other Series having the right to invest. In such a case, the Mandatory Series shall be the Series in which Members have a mandatory obligation to invest. Each Member is required to purchase Interests in each Mandatory Series in an amount equal to a specified percentage of the investments made by that Mandatory Series based generally on his or her annual compensation. Members have a right, but not an obligation, to invest in Series other than the Mandatory Series (the "Voluntary Series"). Associates of WSGR will have the right to invest in Mandatory Series and may have the right to invest in Voluntary Series.

10. Currently, the Mandatory Series consists of two separate Classes: one Class, which is assessable, for Members and certain senior non-attorney employees of WSGR who are accredited investors; and one Class, which is non-assessable, for other Fund Investors. Assessments may be made against assessable interests solely during the Investment Period, and solely for the purpose of funding investments that the Fund otherwise does not have sufficient capital to make.

11. In order to comply with the requirements of rule 701, at the beginning of each Investment Period, the Fund will accept capital contributions or irrevocable commitments for the relevant Series from those Eligible Investors investing pursuant to Regulation D (the "Regulation D Investors"), and then prepare a balance sheet as required by rule 701. The fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments for that Series from those Eligible Investors investing pursuant to rule 701 (the "rule 701 Investors"). The capital contributions and commitments of the Rule 701 Investors, in the aggregate, will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors. Because the capital commitments of the rule 701 Investors may be funded, in

whole or in part, through periodic payroll deductions, the Rule 701 Investors may from time to time contribute money prior to the time the fund is able to invest that money. It currently is anticipated that any such amounts will be placed in a separate bank or escrow account, opening the delivery of the money to the Fund for investment or other authorized purposes.<sup>3</sup> No more than approximately 13% (i.e., 15% of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors) of all Fund investments and other authorized expenditures for each Series will at any time be paid for out of money contributed to the Fund by Rule 701 Investors.

12. The terms of a Fund will be fully disclosed in the private placement memorandum of the Fund, and each Eligible Investor will receive a private placement memorandum and Fund's limited liability company agreement (or other organizational documents) prior to his or her investment in the Fund. Each Fund will send its Fund Investors annual reports, which will contain audited financial statements with respect to those Series in which the Fund Investor has Interests, as soon as practicable after the end of each fiscal year. In addition, as soon as practicable after the end of each fiscal year, the Funds will send a report to each Fund Investor setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state tax returns.

13. Eligible Investors will be permitted to transfer their Interests only with the express consent of the Manager. Any such transfer must be to another Eligible Investor. No fee of any kind will be charged in connection with the sale of Interests.

14. An Eligible Employee's Interests may be subject to repurchase or cancellation if: (a) A Fund Investor ceases to be an Eligible Investor; (b) a Fund Investor is no longer deemed to be able to bear the economic risk of investment in a Fund; (c) adverse tax consequences were to inure to the Fund were a particular Fund Investor to remain; or (d) the continued membership of the Fund Investor would violate applicable law or regulations. In addition, WSGR reserves the right to impose vesting provisions on a Fund Investor's investments in a Fund. In an investment program that provides for

<sup>2</sup> A Qualified Investment Vehicle is not permitted to participate in a rule 701 offering. WSGR or the Manager may, however, in their discretion and in compliance with rule 701, permit an Eligible Employee who purchases Interests in the Fund in a rule 701 offering to transfer some or all of those Interests to a Qualified Investment Vehicle.

<sup>3</sup> Applicants state that in the future, the Fund may not need to use the separate bank account or escrow arrangements, if (for example) Regulation D Investors make sufficient capital contributions to a Fund at the beginning of the Investment Period.

vesting provisions, all or a portion of a Fund Investor's Interests will be treated as unvested, and vesting will occur through the passage of a specified period of time. The portion of a Fund Investor's Interests that are unvested at the time of the termination of a Fund Investor's employment with WSGR may be subject to repurchase or cancellation. Upon any repurchase or cancellation of all or a portion of a Fund Investor's Interests, a Fund will at a minimum pay to the Fund Investor the lesser of (a) the amount actually paid by the Fund Investor to acquire the Interests less the amount of any distributions received by that Fund Investor from the Fund (plus interest at or above the prime rate, as determined by the Manager) and (b) the fair market value of the Interests determined at the time of repurchase or cancellation, as determined in good faith by the Manager. Any interest owed to a Fund Investor pursuant to (a) above will begin to accrue at the end of the Investment Period.

15. WSGR may be reimbursed by a Fund for reasonable and necessary out-of-pocket costs directly associated with the organization and operation of the Funds, including administrative and overhead expenses. There will be no allocation of any of WSGR's operating expenses to a Fund. In addition, WSGR may allocate to a Series any out-of-pocket expenses specifically attributable to the organization and operation of that Series. No separate management fee will be charged to a Fund by the Manager, and no compensation will be paid by a Fund or by Fund Investors currently employed by WSGR Group to the Manager for its services. The Manager may impose a fixed fee or a management fee, in either case not to exceed one percent of the value of the Interests held by any Fund Investor. Such a fee will be charged only to a person who becomes a former employee of WSGR Group and any Qualified Investment Vehicle associated with that Fund Investor, so that these Fund Investors bear their fair share of the costs of managing the Funds.

16. WSGR may in its discretion advance funds to Eligible Investors for the purpose of making their capital contributions. WSGR currently expects that no interest will be charged on such loans, but WSGR reserves the right to charge interest on such loans in the future. The interest rate charged on such loans will not exceed the prime rate. The Funds may borrow from WSGR Group, Members, or a bank or other financial institution, provided that a Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of

the Act to own outstanding securities of the Fund (other than short-term paper). Any borrowings by a Fund will be non-recourse other than to WSGR or a WSGR entity. If WSGR or a WSGR entity or a Member makes a loan to the Funds, the interest rate on the loan will be no less favorable to the Funds than the rate that could be obtained on an arm's length basis.

17. No Fund will acquire any security issued by a registered investment company if immediately after the acquisition the Fund would own more than 3% of the outstanding voting stock of the registered investment company.

#### Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under section 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e) and (h)), sections 36 through 53 of the Act, and the rules and regulations under the Act.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit a Fund to: (1) Purchase, from WSGR or any affiliated person thereof, securities or interests in properties previously acquired for the account of WSGR or any affiliated person thereof; (b) sell, to WSGR or any affiliated person thereof, securities or interests in properties previously acquired by the Funds; (c) invest in companies, partnerships or other investment vehicles offered, sponsored or managed by WSGR or any affiliated person thereof; and (d) purchase interests in any company or other investment vehicle (i) in which WSGR owns 5% or more of the voting securities, or (ii) that otherwise is an affiliated person of the Fund (or an affiliated person of such a person) or any affiliated person of WSGR.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Fund Investors will be informed in the Fund's private placement memorandum of the possible extent of the Fund's dealings with WSGR or any affiliated person thereof. Applicants also state that, as financially sophisticated professionals, Fund Investors will be able to evaluate the attendant risks. Applicants assert that the community of interest among the Fund Investors and WSGR will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Fund, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Fund is a participant. Joint transactions in which a Fund may participate could include the following: (a) An investment by one or more Funds in a security in which WSGR or its affiliated person, or another Fund, is a participant, or with respect to which WSGR or an affiliated person is entitled to receive fees (including, but not limited to, legal fees, placement fees, investment banking fees, brokerage commissions, or other economic

benefits or interests); (b) an investment by one or more Funds in an investment vehicle sponsored, offered or managed by WSGR; and (c) an investment by one or more Funds in a security in which an affiliate is or may become a participant.

6. Applicants state that strict compliance with section 17(d) would cause the Funds to forego investment opportunities simply because a Fund Investor, WSGR or other affiliates of the Fund also had made or contemplated making a similar investment. In addition, because investment opportunities of the types considered by the Funds often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which a Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants note that, in light of WSGR's purpose of establishing the Funds so as to reward Eligible Investors and to attract highly qualified personnel to WSGR, the possibility is minimal that an affiliated party investor will enter into a transaction with a Fund with the intent of disadvantaging the Fund. Finally, applicants contend that the possibility that a Fund may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 4 below. Applicants assert that the flexibility to structure co-investments and joint investments will not involved abuses of the type section 17(d) and rule 17d-1 were designed to prevent.

7. Section 17(f) of the Act designate the entities that may act as investment company custodians, and rule 17f-2 allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f-2 to permit the following exceptions from the requirements of rule 17f-2: (a) A Fund's investments may be kept in the locked files of WSGR or of a Member; (b) for purposes of paragraph (d) of the rule, (i) employees of WSGR will be deemed employees of the Funds, (ii) officers of the Manager and the Manager of a Fund will be deemed to be officers of the Fund, and (iii) the Manager of a Fund will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of WSGR. Applicants assert that the securities held by the Funds are most suitably kept in WSGR's

files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g-1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g-1 requires that a majority of directors who are not interested persons ("disinterested directors") take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g-1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g-1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g-1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules thereunder. Rule 17g-1(j)(3) requires that investment companies relying on this exemption have a majority of disinterested directors, that those disinterested directors select and nominate any other disinterested directors, and that any legal counsel of those disinterested directors be independent. Applicants request an exemption from section 17(g) and rule 17g-1 to the extent necessary to permit each Fund to comply with rule 17g-1 without the necessity of having a majority of the disinterested directors take such action and make such approvals as are set forth in the rule. Specifically, each Fund will comply with rule 17g-1 by having the Manager take such actions and make such approvals as are set forth in rule 17g-1. Applicants state that, because the Manager will be an interested person of the Fund, a Fund could not comply with rule 17g-1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g-1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g-1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as applied to the Funds. The Manager will maintain the materials otherwise required to be filed with the Commission by rule 17g-1(g) and agree that all such material will be subject to examination by the Commission and its staff. The Manager

will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be given to the board of directors would be unnecessary as the Funds will not have boards of directors. The Funds will comply with all other requirements of rule 17g-1.

9. Section 17(j) and paragraph (b) of rule 17j-1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j-1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j-1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds.

10. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevant to the Funds and would entail administrative and legal costs that outweigh any benefit to the Fund Investors. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Fund Investors. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the Manager of each Fund and any other persons who may be deemed members of an advisory board of a Fund from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership of Interests in the Fund. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filing are unnecessary for the protection of investors and burdensome to those required to make them.

#### **Applicant's Conditions**

The applicants agree that any order granting the requested relief will be subject to the following conditions:

#### *Fund Operations*

1. Each proposed transaction to which a Fund is a party otherwise prohibited

by section 17(a) or section 17d-1 (each a "Section 17 Transactions") will be effected only if the Manager determines that: (a) the terms of Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Fund Investors of the participating Fund and do not involve overreaching of the Fund of its Fund Investors on the part of any person concerned; and (b) the Section 17 Transaction is consistent with the interests of the Fund Investors of the participating Fund, the Fund's organizational documents and the Fund's reports to its Fund Investors.

In addition, the Manager will record and preserve a description of such Section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis therefore. All such records will be maintained for the life of a Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. If purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a Member or employee of the WSGR Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

3. The Manager will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The Manager will not make on behalf of a Fund any investment in which a Co-Investor, as defined below, has 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 the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the Manager sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to

dispose of its investment prior to or concurrently with, on the same terms as, on a *pro rata* basis with the Co-Investor. The term "Co-Investor" with respect to any Fund means any person who is (a) an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Fund; (b) the WSGR Group; (c) a Member, lawyer, or employee of the WSGR Group; (d) an investment vehicle offered, sponsored, or managed by WSGR or an affiliated person of WSGR; or (e) an entity in which a WSGR entity acts as a general partner or has a similar capacity to control the sale or other disposition of the entity'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; (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; (d) 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 (e) when the investment is comprised of securities (i) that meet the requirements of and are authorized as Nasdaq SmallCap Market securities by The Nasdaq Stock Market, Inc., (ii) that have an average daily trading volume value over the last 60 calendar days of at least \$1 million, and (iii) are issued by an issuer whose common equity securities have a public float value of at least \$150 million.

5. The Manager of each Fund will send to each person who was a Fund Investor in such Fund at any time during the fiscal year then ended audited financial statements with respect to those Series in which the Fund Investor held Interests. 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 Fund as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the Manager of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as

shall be necessary for the preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. Each Fund and the Manager will maintain and preserve, for the life of each Series of that Fund and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and annual reports of such Series to be provided to its Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

#### *Compliance With Rule 701*

7. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, WSGR will make available at no charge to potential Fund Investors the services of a Financial Consultant qualified to provide advice concerning the appropriateness of investing in a Fund. Specifically, the Financial Consultant will hold one or more group meetings with potential Fund Investors at which the Financial Consultant will discuss the risks and other considerations relevant to determining whether to invest in a Fund. The Financial Consultant also will be available to the group of potential Fund Investors to answer general questions regarding an investment in the Fund. In addition, potential Fund Investors will be given the opportunity to submit relevant questions and issues to the Financial Consultant in advance of the group meetings, so that the Financial Consultant can address those questions and issues at the meetings. WSGR will not need to reveal the specific investments made by any Fund to the Financial Consultant, as long as the investment objectives, risk characteristics and other material information about the Fund of the type that would be disclosed in the offering documents for the Fund is made available to the Financial Consultant.

8. WSGR will at all times control each Fund, within the meaning of rule 405 under the Securities Act. In this regard, WSGR will, either directly or through a wholly-owned subsidiary, be the sole manager of the Fund, own at least 95% of the voting Interests of the Fund, and make all investment and other operational decisions for the Fund.

9. WSGR or a wholly-owned subsidiary will own not less than 5% of the economic Interests issued each year

by the Fund, and (as discussed above) at least 95% of the voting Interests of the Fund. In addition, WSGR and its Members, directly or through Qualified Investment Vehicles, together will own at least 80% of the economic Interests of each Series.

10. WSGR prepares its financial statements on a modified cash basis, and does not consolidate the Fund's financial statements with its own. If, however, WSGR prepared its financial statements in accordance with GAAP, it would consolidate the Fund's financial statements with its own.

11. WSGR, when offering Interests pursuant to rule 701 under the Securities Act, will issue Interests in each Series in compliance with rule 701(d)(2),<sup>4</sup> and will comply with all applicable requirements of rule 701(e).<sup>5</sup>

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-22387 Filed 9-5-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25145; 812-12070]

### Keeper Holdings, LLC, et al.; Notice of Application

August 29, 2001.

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

**ACTION:** Notice of an application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act, under section 6(c) of the Act for an exemption from section 17(e) of the Act and rule 17e-1 under the Act, and under section 17(d) of the Act and rule 17d-1 under the Act permitting certain joint transactions.

<sup>4</sup> If WSGR relies on rule 701(d)(2)(ii), it will not sell pursuant to rule 701, during any consecutive 12-month period, Interests in the Fund if the sales prices of those Interests exceeds 15% of the total assets of the Fund.

<sup>5</sup> In order to comply with the requirements of rule 701, at the beginning of each Investment Period the Fund will accept capital contributions or irrevocable commitments from Regulation D Investors for the relevant Series, and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments, from Rule 701 Investors for that Series, which in the aggregate will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from Regulation D Investors.

**SUMMARY OF THE APPLICATION:** The order would permit (1) registered investment companies ("funds") for which certain affiliates of State Street Corporation ("State Street") act as investment adviser, promoter or principal underwriter to engage in certain transactions with certain affiliates of Citigroup, Inc. ("Citigroup"), and (2) funds for which certain affiliates of Citigroup act as investment adviser, promoter or principal underwriter to engage in certain transactions with certain affiliates of State Street.

**Applicants:** Keeper Holdings, LLC (the "Citigroup Member") and State Street Bank and Trust Company (the "State Street Member").

**Filing Dates:** The application was filed on April 24, 2000 and amended on August 28, 2001.

**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 24, 2001, and should be accompanied 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, NW, Washington, DC 20549-0609. Applicants, c/o Keeper Holdings, LLC, Travelers Life and Annuity, One Tower Square, Hartford, Connecticut 06183.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Senior Counsel, at (202) 942-0582, 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 5th Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

### Applicants' Representations

1. Citigroup is a large diversified financial services company. It currently has ten investment advisory subsidiaries (including Citibank N.A.) that collectively act as investment adviser to at least 111 funds consisting of at least 289 portfolios. Its subsidiaries Salomon

Smith Barney Inc. and Citibank, N.A. are among the largest underwriters, dealers and/or brokers in securities, commodities, foreign exchange, commercial loans, securities loans, derivative instruments and other financial instruments and conduct hundreds of billions of dollars per year of principal and agency transactions with funds.

2. State Street provides transfer agency, custody or administration services for funds and other investment vehicles holding at least \$6 trillion in assets as of December 31, 1999, including 16 Citigroup funds, as defined below. SSgA Funds Management, Inc. a subsidiary of State Street ("Funds Management"), acts as investment adviser to at least 27 funds consisting of at least 91 portfolios.<sup>1</sup> Funds Management is registered under the Investment Advisers Act of 1940 (the "Advisers Act"). State Street also has three investment advisory subsidiaries registered under the Advisers Act, each of which manages one fund. State Street currently engages in a large volume of principal and agency transactions with third party funds, in areas such as securities, foreign exchange, settlement credit, repurchase agreements, securities loans, derivative instruments and other financial instruments.

3. On December 9, 1999, Citigroup and State Street, through the Citigroup Member and the State Street Member, entered into a definitive agreement to form and operate a joint venture, for the primary purpose of providing recordkeeping and other bundled services for defined benefit and defined contribution pension plans (the "Venture"). The Venture consists of CitiStreet LLC ("CitiStreet") and persons controlled by CitiStreet (together with CitiStreet, the "Venture Entities"). The State Street Member and the Citigroup Member each own 50% of CitiStreet. State Street obtained its interest by contributing its recordkeeping business for institutional clients, primarily defined contribution pension plans, and its benefits outsourcing business, which provide services for defined benefit and health and welfare benefit plans. Citigroup obtained its interest by contributing cash and its interest in various subsidiaries engaged in defined contribution plan recordkeeping, plan communication and administration services, investment advisory services and related products and services for

<sup>1</sup> Prior to May 2001 these services were provided through the State Street Global Advisors division of the State Street Member. However, as a result of the Gramm-Leach-Bliley Act of 1999, State Street now provides these services through funds Management.