or deduction were required. In this event, FS obligations under its related Note may also cover this ''gross up'' obligation. In addition, if any SPS is required to pay taxes with respect to income derived from interest payments on the Notes issued to it, the FS may be required to pay additional interest on the related Notes as necessary in order that net amounts received and retained by the SPS, after the payment of the taxes, shall result in the SPS having the funds as it would have had in the absence of the payment of taxes.

The proceeds of any financing by FS or any SPS will be remitted, paid as a dividend, loaned or otherwise transferred to AEP or its designee. The proceeds of preferred securities, debt securities, stock purchase contracts and stock purchase units will be used to acquire the securities of associate companies and interests in other businesses, including interests in EWGs and FUCOs, or in any transactions permitted under the Act and for other general corporate purposes, including the reduction of short-term indebtedness. AEP had approximately $3.6 billion outstanding short-term indebtedness as of September 30, 2001. No proceeds will be used to purchase generation assets currently owned by AEP or any affiliate unless the purchase has been approved by order of this Commission under File No. 70–9785 or other similar applications.

AEP represents that no financing proceeds will be used to acquire the equity securities of any company or any interest in other businesses unless the acquisition has been approved by the Commission in this proceeding or in File No. 70–9353 or is in accordance with an available exemption under sections 32, 33 and 34 of the Act or rule 58 under the Act. AEP does not seek in this proceeding any increase in the amount it is permitted to invest in EWGs and FUCOs.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–402 Filed 1–7–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25353; 813–226]

DRW Venture Partners LP and RBC Dain Rauscher Corp.; Notice of Application

January 2, 2002.

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), (e), (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 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships and limited liability companies (''Partnerships'') formed for the benefit of key employees of RBC Dain Rauscher Corp. (''DRC'') and certain of its affiliates from certain provisions of the Act. Each Partnership will be an ''employees' securities company'' as defined in section 2(a)(13) of the Act.

APPLICANTS: DRW Venture Partners LP (the ''Initial Partnership'') and DRC.

FILING DATES: The application was filed on January 20, 2000 and amended on December 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 January 28, 2002, 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, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, 60 South Sixth Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 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 (telephone (202) 942–8090).

Applicants' Representations

1. DRC is a holding company that provides investment advice and services to individual and institutional investors and investment banking services to corporate and governmental clients through its principal subsidiary, Dain Rauscher Incorporated. Dain Rauscher Incorporated is a wholly-owned subsidiary of DRC and is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). DRC and its affiliates as defined in rule 12b-2 under the Exchange Act are referred to collectively in this notice as the ''DRC Group.''

2. DRC Group has offered and proposes to continue to offer various investment programs for the benefit of its Eligible Employees (as defined below). These programs may be structured as different Partnerships, as separate plans within a Partnership, or as investments by the Partnerships in investment entities formed by DRC Group, from time to time, which are exempt from registration under the Act in reliance on sections 3(c)(1), 3(c)(6), or 3(c)(7) of the Act and which are managed by DRC employees (the ''DRC Funds''). Each Partnership will be a limited partnership or limited liability company formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified management investment company. The Partnerships have been or will be established primarily for the benefit of highly compensated employees of DRC Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

3. DRC, a Delaware corporation, is the general partner of the Initial Partnership (together with any DRC Group entity which acts as the general partner of a Partnership, ''General Partner''). The General Partner of the Initial Partnership will not be registered under

the Advisers Act pursuant to section 203(b)(3) of the Advisers Act and rule 203(b)(3)–1 thereunder. The General Partner of other Partnerships will register as an investment adviser under the Advisers Act if required under applicable law. The General Partner will manage, operate, and control each of the Partnerships. The General Partner will be authorized to delegate management responsibility to a DRC Group entity or to a committee of DRC Group employees (including, without limitation, the managers of other Partnerships). The General Partner will not receive a performance-based fee, or carried interest, from the Initial Partnership, and the General Partner does not currently anticipate receiving a performance-based fee, or carried interest, from any Partnership.[1]

4. Limited partner interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act'') or Regulation D under the Securities Act, and will be sold only to ''Eligible Employees'' or, if permitted by DRC, to ''Qualified Participants'' (in each case as defined below) (collectively, ''Participants''). Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in a Partnership. An Eligible Employee is (a) an individual who is a current or former employee, officer, director, or ''Consultant'' of DRC Group and, except for a maximum of 35 individuals who either manage the day-to-day affairs of the Partnership in question (''Managing Employees'') or who meet the alternative standards set forth in paragraph 5 below, meets the standards of an accredited investor under rule 501(a)(6) of Regulation D, or (b) an entity that is a current or former ''Consultant'' of DRC Group and meets the standards of an accredited investor under rule 501(a) of Regulation D.[2]

[1] A ''carried interest'' is an allocation to the General Partner based on the net gains of an investment program and is in addition to the amount that is allocable to the General Partner in proportion to its capital contributions. Any carried interest payable to a General Partner that is registered under the Advisers Act will be charged only to the extent permitted by section 205(a) of the Advisers Act and rule 205–3 under the Advisers Act. Any ''carried interest'' payable to a General Partner that is not registered under the Advisers Act will comply with the requirements of section 205(b)(3) of the Advisers Act (with the Partnership treated as though it were a business development company for purposes of that section).

[2] A ''Consultant'' is a person or entity whom DRC Group has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser to DRC Group and who shares a community of interest with DRC Group and DRC Group employees.

Eligible Employees will be experienced professionals in the investment banking and securities, investment management or financial services businesses, or in the related administrative, financial, accounting, legal, or operational activities.

5. In order for an individual who is not an accredited investor under rule 501(a)(6) of Regulation D to qualify as an Eligible Employee, the individual must (a) have a graduate degree in business, law, or accounting, (b) have a minimum of five years of consulting, investment banking or similar business experience, and (c) have had reportable income from all sources (including any profit shares or bonus) in the calendar year immediately preceding such individual's admission as a Limited Partner in excess of $120,000 and have a reasonable expectation of reportable income of at least $150,000 in the years in which such individual invests in a Partnership. In addition, an Eligible Employee in this category will not be permitted to invest in any year more than 10% of his or her income from all sources for the immediately preceding year in the Partnership and in all other Partnerships in the aggregate in which he or she has previously invested.

6. Managing Employees will have primary responsibility for operating the Partnership. These individuals will be officers or employees of DRC Group who meet the definition of Knowledgeable Employee in rule 3c–5(a)(4) under the Act with respect to a Partnership as if it were a ''covered company'' within the meaning of the rule.

7. A Qualified Participant (a) is an Eligible Family Member or Qualified Entity, (in each case as defined below) of an Eligible Employee, and (b) if purchasing an Interest from a Partner[3] or directly from the Partnership, comes within one of the categories of an ''accredited investor'' under rule 501(a) of Regulation D. An ''Eligible Family Member'' is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A ''Qualified Entity'' is (a) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (b) a partnership, corporation, or other entity controlled by an Eligible Employee;[4] or (c) a trust or other entity established solely for the benefit of Eligible Family Members of an Eligible Employee.

8. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year. In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, deductions, and other tax items.

9. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner. No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or a DRC Group entity. No sales load will be charged in connection with the sale of an Interest.

10. An Eligible Employee's Interest in a Partnership may be subject to repurchase or cancellation if (a) the Eligible Employee's relationship with DRC Group is terminated for cause; (b) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of DRC Group; or (c) the Eligible Employee voluntarily resigns from employment with DRC Group. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (a) the amount actually paid by the Eligible Employee to acquire the Interest (plus interest, as determined by the General Partner), or (b) the fair market value of the Interest as determined at the time of repurchase by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

11. Subject to the terms of the applicable limited partnership agreement, a Partnership will be permitted to enter into transactions

[3] ''Partner'' means any partner of a Partnership, including the General Partner.

[4] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of ''Qualified Entity'' is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between DRC Group and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an ''accredited investor'' under rule 501(a)(6) of Regulation D and who will have access to the General Partner or DRC Group.

involving (a) a DRC Group entity; (b) a portfolio company, (c) any Partner or person or entity affiliated with a Partner, (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with DRC Group and over which a DRC Group entity will exercise investment discretion (a ''Third Party Fund''), or (e) any partner or other investor of a Third Party Fund that is not affiliated with DRC Group (a ''Third Party Investor''). These transactions may include (a) a Partnership's purchase or sale of an investment or an interest from or to any DRC Group entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Partners.

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

13. A DRC Group entity (including the General Partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are ''usual and customary,'' subject to the requirements described below. DRC Group entities (including the General Partner) also may be compensated for services to entities in which the Partnerships invests and entities that are competitors of these entities.

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, in relevant part, as any investment company all of whose securities 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 an investment company that is not registered under section 8 of the Act from selling or redeeming its 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 sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (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 thereunder.

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) a DRC Group entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) any Partnership to invest in or engage in any transaction with any DRC Group entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any DRC Group entity, or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any DRC Group entity, or Third Party Fund will become affiliated; and (iii) any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with DRC Group. Applicants also state that, as professionals employed in the investment banking, investment management or financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and DRC Group will provide the best protection against any risk of abuse.

5. Section 17(d) and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such 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 Partnership (including without limitation, the General Partner, other DRC Group entities, or Third-Party Fund), or affiliated persons of any of these persons (including without limitation, Third-Party Investors) to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which a Partnership or a company controlled by a Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with DRC Group or DRC Group's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of Eligible Employees as an incentive for them to remain with DRC Group and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with DRC Group are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of DRC Group enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate; (b) investments made by DRC Group will not be generally available to investors even of the financial status of the Eligible Employees; and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by DRC Group and a Partnership might lead to less advantageous treatment of the Partnership will be mitigated by the community of interest among DRC Group and the Participants, and the fact that senior officers and directors of DRC Group entities will be investing in the Partnership. Finally, applicants contend that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 3 below. (p. 16) Applicants believe that this condition will ensure that a Partnership will co-invest side-by-side and pro rata with, and on at least as favorable terms as, a DRC Group entity.

8. Co-investments with Third Party Funds, or by a DRC Group entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3. Applicants note that it is common for a Third Party Fund to require that DRC Group invest its own capital in Third Party Fund investments, and that the DRC Group investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to DRC Group. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by DRC Group in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships *vis-à-vis* a Third Party Fund.

9. Section 17(e) and rule 17e–1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a DRC Group entity (including the General Partner), that acts as an agent or broker, to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation is deemed to be ''usual and customary.'' Applicants state that for the purposes of the application, fees or other compensation that is charged or received by a DRC Group entity will be deemed to be ''usual and customary'' only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds; (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds; and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because DRC Group does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a DRC Group entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors of the General Partner who are not ''interested persons'' take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1. Applicants state that each Partnership will comply with rule 17e–1 by having a majority of the directors of the General Partner take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1.

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit a DRC Group entity to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest between DRC Group and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the Partnerships' directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. 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 provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships.

14. 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 relevance to the Partnerships and

would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

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

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the ''Section 17 Transaction'') will be effected only if the General Partner determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of the Partnership and do not involve overreaching of the Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners in the Partnership, and the Partnership's organizational documents and reports to its Partners. In addition, the General Partner of each Partnership will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the Commission and its staff.[5]

2. In connection with the Section 17 Transactions, the General Partner of each Partnership 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 Partnership, or any affiliated person of an affiliated person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless the Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner 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 Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term ''Co-Investor'' with respect to any Partnership means any person who is (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) DRC Group; (c) an officer or director of DRC Group; or (d) an entity (other than a Third Party Fund) in which the General Partner 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, will 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 or other investment vehicle established for any immediate family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (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 under the Exchange Act; or (e) when the investment is comprised of securities that are listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, the accounts, books, and other documents that constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to Participants, and agree that these records will be subject to examination by the Commission and its staff.[6]

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

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a DRC Group director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–401 Filed 1–7–02; 8:45 am]

BILLING CODE 8010–01–P

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

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