

retroactive application of the new event reporting criteria to previously evaluated events would add burden to the licensees but would not provide timely notification to the NRC. Based on this comment and the reasons set forth below, the staff recommends that the errata clarify that retroactive notification is necessary only required if either of the criteria were exceeded during the last steam generator tube inspections.

The errata to NUREG-1022 are intended to clarify existing requirements rather than to establish new requirements or criteria; however, the NRC recognizes that the wording in NUREG-1022 may have resulted in confusion regarding whether a report was required, given the condition of the tubes. As a result, the staff assessed the purpose of the report, other steam generator tube inspection reports received, and the potential value of evaluating previous inspection results. These items are discussed further below.

The main purpose of the event report is to notify the staff, in a timely manner, of significant degradation of the steam generator tubes. This report allows the staff to review the corrective actions taken, to assess the generic implications of the findings, and to take any regulatory action that may be appropriated. From a practical perspective, the staff and public are informed of the results of the steam generator tube inspections following each inspection through reports submitted to the NRC in accordance with technical specification reporting requirements. These reports are typically submitted to the NRC within one year of the inspection. As a result, if a licensee were to experience significant degradation of the steam generator tubes, the staff and public would have the opportunity to identify this through the review of these reports. In addition, it is highly likely that if significant degradation was observed, it would have been assessed as part of the reactor oversight process. For this reason, retroactive notification of previous occurrences when either criterion was exceeded is not likely to provide any new information. This logic holds for all previous inspections except for the last steam generator tube inspections since these results may not have been reported and/or the NRC may not have completed its review of these reports. As a result, the staff concludes that the last steam generator tube inspection results should be reviewed and if either criterion was exceeded, this should be reported in accordance with 10 CFR 50.72 and 50.73. Given that the industry's steam generator initiative

(referred to as NEI 97-06) has essentially the same criteria and all pressurized water reactors have committed to follow this initiative, no significant burden should be imposed on any licensee in assessing whether the criteria were exceeded during the last steam generator tube inspection.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6-D59, Washington, DC 20555-0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T6-D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION, CONTACT: Samuel S. Lee at (301) 415-1061 or by e-mail to ssl@nrc.gov, or Kenneth J. Karwoski at (301) 415-2752 or by e-mail to kjk1@nrc.gov.

Dated in Rockville, Maryland, this 27th day of August, 2004.

For the Nuclear Regulatory Commission.

Francis M. Costello,

Acting Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04-21424 Filed 9-23-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26601; 812-13123]

Allianz Dresdner Asset Management of America, L.P., et al.; Notice of Application

September 17, 2004.

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

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (the "1940 Act").

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the 1940 Act, with respect to a consent order and final judgment entered by the Superior Court of New Jersey, Chancery Division—General Equity of Essex County ("New Jersey Superior Court") on June 1, 2004 (the "New Jersey Order"), until the earlier of September 13, 2006, or the date the Commission takes action on the application for a permanent order. Applicants also have requested a permanent order.

APPLICANTS: Allianz Dresdner Asset Management of America L.P. ("ADAM"); PA Distributors LLC ("PAD"); PEA Capital LLC ("PEA"); PA Fund Management LLC ("PAFM") (collectively, the "Consent Parties"); Allianz Life Insurance Company of North America ("Allianz Life NA"); Allianz Life Insurance Company of New York ("Allianz Life NY"); Cadence Capital Management LLC; Caywood Scholl Capital Management LLC ("Caywood Scholl"); Dresdner Advisors LLC ("Dresdner"); NFJ Investment Group L.P. ("NFJ"); Nicholas-Applegate Capital Management LLC and Nicholas-Applegate Securities LLC (together, "Nicholas-Applegate"); OCC Distributors LLC, OpCap Advisors LLC and Oppenheimer Capital LLC (together, "Oppenheimer"); Pacific Investment Management Company LLC ("PIMCO"); PA Retail Holdings LLC ("PA Retail"); RCM Capital Management LLC ("RCM"); US Allianz Advisers LLC and US Allianz Investor Services LLC (together, "US Allianz") (collectively, the "Separate Parties," and together with the Consent Parties, the "Applicants").¹

FILING DATE: The application was filed on September 17, 2004.

Hearing or Notification of Hearing: A permanent order granting the requested relief 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 October 12, 2004, 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: ADAM, 888 San Clemente Drive, Suite 100, Newport Beach, CA 92660; PAD, 2187 Atlantic Street, Stamford, CT 06902; PEA and PAFM,

¹ Applicants request that any relief granted pursuant to the application also apply to any other existing company with respect to which ADAM, PAD or PEA is an affiliated person (which subsequently becomes an investment adviser, subadviser, depositor or principal underwriter for any registered investment company) and to any other company with respect to which ADAM, PAD or PEA may become an affiliated person in the future (included in the term "Applicants").

1345 Avenue of the Americas, New York, NY 10105; Allianz Life NA and US Allianz, 5701 Golden Hills Drive, Minneapolis, MN 55416; Allianz Life NY, 152 West 57th Street, 18th Floor, New York, NY 10019; Cadence Capital Management LLC, 265 Franklin Street, Boston, MA 02110; Caywood Scholl, Four Embarcadero Center, 28th Floor, San Francisco, CA 94111; Dresdner, 1301 Avenue of the Americas, 36th Floor, New York, NY 10019; NFJ, 2121 San Jacinto Street, Suite 1840, Dallas, TX, 75201; Nicholas-Applegate, 600 West Broadway, San Diego, CA 92101; Oppenheimer and PA Retail, 1345 Avenue of the Americas, New York, 49th Floor, NY 10105; PIMCO, 840 Newport Center Drive, Newport Beach, CA 92660; and RCM, Four Embarcadero Center, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942-0528, or Janet M. Grossnickle, 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. ADAM, a limited partnership organized under the laws of Delaware, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). PAD, a Delaware limited liability company is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"). PAD serves as distributor, principal underwriter and/or depositor to various registered investment companies. PEA, a Delaware limited liability company is registered as an investment adviser under the Advisers Act. PEA currently serves as investment adviser and subadviser to various registered investment companies. PAFM, a Delaware limited liability company, is a wholly-owned indirect subsidiary of ADAM that is registered as an investment adviser under the Advisers Act. PAFM currently serves as investment adviser for various registered investment companies. Registered investment companies to which one or more of the Consent Parties serve as depositor, distributor, principal underwriter or primary investment adviser are referred to as "Consent Party Funds." Registered investment companies to which one or

more Consent Parties serve solely as an investment subadviser are referred to as "Sub-advised Funds." The Separate Parties are controlled by, or under common control with ADAM, PAD or PEA and serve as depositor, principal underwriter, investment adviser or subadviser for one or more registered investment companies ("Non-Party Funds," collectively with the Consent Party Funds and the Sub-advised Funds, the "Funds").

2. On February 17, 2004, the Attorney General of New Jersey ("NJAG") filed an action in the New Jersey Superior Court against ADAM, PAD and PEA, among others, relating to market timing abuses involving certain Funds advised by PAFM and subadvised by PEA (the "Complaint").² The Complaint alleged misconduct and fraudulent and deceptive acts and practices related to, among other matters, (a) PEA's arrangement with a broker-dealer permitting Canary Capital Partners, LLC and Canary Investment Management LLC (collectively, "Canary") to market time certain Consent Party Funds in return for "sticky assets" from which ADAM, PAD and PEA benefited; (b) PEA's facilitation of Canary's market timing transactions by disclosing to Canary's broker-dealer otherwise non-public information regarding the portfolio holdings of certain Consent Party Funds; and (c) PEA's arrangement with PAD employees responsible for preventing market timing in these Consent Party Funds to permit Canary to engage in market timing transactions. Without admitting or denying the allegations in the Complaint, ADAM, PAD and PEA consented to the entry of the New Jersey Order, which prohibited, among other activities, certain disclosures of portfolio holdings. The New Jersey Order also required the Consent Parties to institute various corporate governance changes and management changes.

3. On September 7, 2004, PEA, PAD and PAFM submitted offers of settlement and consented to the entry by the Commission of an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 15(b) of the Exchange Act, Sections 203(e) and 203(k) of the Advisers Act and Sections 9(b) and 9(f) of the 1940 Act relating to similar conduct ("Commission Order").³ The

Commission Order notes that, in determining to accept the settlement offer, the Commission considered that certain Consent Party Funds have voluntarily undertaken to operate in accordance with the following policies and practices:

a. No more than 25 percent of the members of the board of Trustees ("Board") of these Consent Party Funds will be persons who either (i) were directors, officers or employees of PEA, PAD or PAFM at any point during the preceding 10 years or (ii) are interested persons, as defined in the 1940 Act, of that Consent Party Fund or of PEA, PAD or PAFM. In the event that a Board fails to meet this requirement at any time due to the death, resignation, retirement or removal of any independent Trustee, the independent Trustees will take such steps as may be necessary to bring the Board in compliance within a reasonable period of time; and

b. No chairman of the Board of these Consent Party Funds will either (i) have been a director, officer or employee of PEA, PAD or PAFM at any point during the preceding 10 years or (ii) be an interested person, as defined in the 1940 Act, of that Consent Party Fund or of PEA, PAD or PAFM; and

c. Any person who acts as counsel to the independent Trustees of these Consent Party Funds will be an "independent legal counsel" as defined by Rule 0-1 under the 1940 Act; and

d. No action will be taken by the Board or by any of its committees unless such action is approved by a majority of the members of the Board or of such committee, as the case may be, who are neither (i) persons who were directors, officers or employees of PEA, PAD or PAFM at any point during the preceding 10 years nor (ii) interested persons, as defined in the 1940 Act, of these Consent Party Funds or of PEA, PAD or PAFM. In the event that any action proposed to be taken is opposed by a majority vote of the independent Trustees of these Consent Party Funds, then that Consent Party Fund will, in its shareholder report for such period, disclose such proposal, the related board vote, and the reason, if any, for such independent Trustees' vote against the proposal.

e. Commencing in 2005 and not less than every fifth calendar year thereafter, these Consent Party Funds will hold a meeting of shareholders at which their Boards will be elected.

f. Effective immediately, these Consent Party Funds shall comply with Rule 38a-1 under the 1940 Act,

² *Harvey v. Allianz Dresdner Asset Management of America L.P., et al.*, No. C-54-04 (Super. Ct. N.J., Feb. 17, 2004).

³ *In the Matter of PA Fund Management LLC, et al.*, Administrative Proceeding File No. 3-11645,

notwithstanding the October 5, 2004 compliance date for the rule as adopted by the Commission.

4. Under the Commission Order, PEA, PAD and PAFM will, among other things, maintain a compliance and ethics oversight infrastructure having the following characteristics:

a. PEA and PAFM shall maintain a Code of Ethics Oversight Committee having responsibility for all matters relating to issues arising under the Adviser Code of Ethics. The Code of Ethics Oversight Committee shall be comprised of senior executives of PEA, PAD and PAFM's operating businesses. PEA and PAFM shall hold at least quarterly meetings of the Code of Ethics Oversight Committee to review violations of the Code of Ethics, as well as to consider policy matters relating to the Code of Ethics. PEA, PAD and PAFM shall report on issues arising under the Code of Ethics, including all violations thereof, to the Audit Committee of the Trustees of certain Consent Party Funds with such frequency as the Audit Committee may instruct, and in any event at least quarterly, provided however that any material violation shall be reported promptly.

b. PEA, PAD and PAFM shall establish an Internal Compliance Controls Committee to be chaired by the Director of Compliance for ADAM (or if he so designates, PAFM's Chief Compliance Officer), which Committee shall have as its members senior executives of PEA, PAD and PAFM's operating businesses. Notice of all meetings of the Internal Compliance Controls Committee shall be given to the outside independent counsel of the Board of certain Consent Party Funds, who shall be invited to attend and participate in such meetings provided that the involvement of the outside independent counsel of the Board shall be limited to compliance issues relating to those Consent Party Funds. The Internal Compliance Controls Committee shall review compliance issues throughout the businesses of PEA, PAD and PAFM, endeavor to develop solutions to those issues as they may arise from time to time, and oversee implementation of those solutions. The Internal Compliance Controls Committee shall provide reports on internal compliance matters to the Boards of certain Consent Party Funds with such frequency as the Boards of such Consent Party Funds may reasonably instruct, and in any event at least quarterly. PEA, PAD and PAFM shall also provide to the Audit Committees of PEA, PAD and PAFM the same reports of the Code of Ethics

Oversight Committee and the Internal Compliance Controls Committee that it provides to the Audit Committee of these Consent Party Funds.

c. PEA, PAD and PAFM shall, at their own expense, cause there to be a senior-level employee whose responsibilities shall include compliance matters related to conflicts of interests relating to the business of PEA, PAD and PAFM, as the case may be. This officer will report directly to the Chief Compliance Officers of PEA, PAD and PAFM and shall have oversight over compliance matters related to conflicts of interests at PEA, PAD and PAFM.

d. PEA, PAD and PAFM shall require the Chief Compliance Officer of each of PEA, PAD and PAFM to report to the Chief Compliance Officer of certain Consent Party Funds who shall report to the Board of such Consent Party Funds any breach of fiduciary duty owed to the Board and/or violations of the Federal securities laws of which he or she becomes aware in the course of carrying out his or her duties, with such frequency as the Board may instruct, and in any event at least quarterly, provided however that any material breach (*i.e.*, any breach that would be important, qualitatively or quantitatively, to a reasonable Trustee) shall be reported promptly.

e. PEA, PAD and PAFM shall establish a corporate ombudsman to whom their employees may convey concerns about business matters that they believe implicate matters of ethics or questionable practices. PEA, PAD and PAFM shall establish procedures to investigate matters brought to the attention of the ombudsman, and these procedures shall be presented for review and approval by the independent Trustees of certain Consent Party Funds. PEA, PAD and PAFM shall also review matters brought to the attention of the ombudsman, along with any resolution of such matters, with the independent Trustees of certain Consent Party Funds with such frequency as the independent Trustees of such Consent Party Funds may instruct.

f. Effective immediately, PEA, PAD and PAFM will comply with Rule 206(4)-7 under the Advisers Act, notwithstanding the October 5, 2004 compliance date for each rule as adopted by the Commission.

5. In addition, under the Commission Order:

a. PEA, PAD and PAFM shall retain, within 60 days of the date of entry of the Commission Order, the services of an Independent Compliance Consultant not unacceptable to the staff of the Commission and a majority of the independent Trustees of certain Consent

Party Funds. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by PEA, PAD and PAFM or their affiliates. PEA, PAD and PAFM shall require that the Independent Compliance Consultant conduct a comprehensive review of PEA, PAD and PAFM's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and Federal securities law violations by PEA, PAD and PAFM and their employees. This review shall include, but shall not be limited to, a review of PEA, PAD and PAFM's market timing controls across all areas of its business, a review of certain Consent Party Funds' pricing practices that may make those funds vulnerable to market timing, a review of certain Consent Party Funds' utilization of short term trading fees and other controls for deterring excessive short term trading, and a review of PEA, PAD and PAFM's policies and procedures concerning conflicts of interest, including conflicts arising from advisory services to multiple clients. PEA, PAD and PAFM shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to their files, books, records, and personnel as reasonably requested for the review.

b. PEA, PAD and PAFM shall require that, at the conclusion of the review, which in no event shall be more than 120 days after the date of entry of the Commission Order, the Independent Compliance Consultant shall submit a Report to PEA, PAD and PAFM, the Trustees of certain Consent Party Funds, and the staff of the Commission. The Report shall address the issues described above, and shall include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures of PEA, PAD and PAFM and certain Consent Party Funds, and a procedure for implementing the recommended changes in or improvements to PEA, PAD and PAFM's policies and procedures.

c. PEA, PAD and PAFM shall adopt all recommendations with respect to PEA, PAD and PAFM contained in the Report of the Independent Compliance Consultant; provided, however, that within 150 days after the date of entry of the Commission Order, PEA, PAD and PAFM shall in writing advise the Independent Compliance Consultant, the Trustees of certain Consent Party Funds and the staff of the Commission

of any recommendations that they consider to be unnecessary or inappropriate. With respect to any recommendation that PEA, PAD and PAFM consider unnecessary or inappropriate, PEA, PAD and PAFM need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

d. As to any recommendation with respect to PEA, PAD and PAFM's policies and procedures on which PEA, PAD and PAFM and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 180 days of the date of entry of the Commission Order. In the event PEA, PAD and PAFM and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, PEA, PAD and PAFM will abide by the determinations of the Independent Compliance Consultant.

e. PEA, PAD and PAFM (i) shall not have the authority to terminate the Independent Compliance Consultant, without the prior written approval of the majority of independent Trustees and the staff of the Commission; (ii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Commission Order at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the Trustees or the Commission.

f. PEA, PAD and PAFM shall require that the Independent Compliance Consultant, for the period of the engagement and for a period of two years from completion of the engagement, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with PEA, PAD or PAFM, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. PEA, PAD and PAFM shall require that any firm with which the Independent Compliance Consultant is affiliated in performance of his or her duties under the Order shall not, without prior written consent of the independent Trustees and the staff of the Commission, enter into any

employment, consultant, attorney-client, auditing or other professional relationship with PEA, PAD or PAFM, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

g. Commencing in 2006, and at least once every other year thereafter, PEA, PAD and PAFM shall undergo a compliance review by a third party, who is not an interested person, as defined in the 1940 Act, of PEA, PAD or PAFM. At the conclusion of the review, the third party shall issue a report of its findings and recommendations concerning PEA, PAD and PAFM's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and Federal securities law violations by PEA, PAD or PAFM and their employees in connection with their duties and activities on behalf of and related to certain Consent Party Funds. Each such report shall be promptly delivered to PEA, PAD and PAFM's Internal Compliance Controls Committee and to the Audit Committee of the Board for PEA, PAD and PAFM.

6. In addition to provisions relating to disgorgement and civil money penalties and the distribution of these amounts, PEA, PAD and PAFM have undertaken in the Commission Order that no later than twenty-four months after the date of entry of the Commission Order, the chief executive officers of PEA, PAD and PAFM will certify to the Commission in writing that PEA, PAD and PAFM have fully adopted and complied in all material respects with certain undertakings in the Commission Order including those described in paragraphs 4 and 5 above, and with the recommendations of the Independent Compliance Consultant or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance. PEA, PAD and PAFM also have undertaken to preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of each of PEA, PAD and PAFM's compliance with these undertakings.

7. Applicants note that PEA, PAD and PAFM have also submitted offers of settlement and consented to the entry by the Commission of another Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order relating to certain alleged failures to

disclose conflicts of interest arising from PAD's arrangements with various broker-dealers for increased "shelf space" within those broker-dealers' distribution systems ("Shelf Space Order").⁴ Applicants state that the Shelf Space Order contains undertakings, similar to those described above, focused on monitoring and disclosing certain conflicts of interest arising in connection with the distribution of shares of certain Consent Party Funds.

Applicants' Legal Analysis

1. Section 9(a)(2) of the 1940 Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with its activities as an investment adviser or underwriter from acting as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the 1940 Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the 1940 Act, in relevant part, defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Each of the other Applicants is an affiliated person of ADAM, PAD or PEA within the meaning of section 2(a)(3) of the 1940 Act. Applicants do not concede that the New Jersey Order would disqualify the Applicants, but in order to resolve any uncertainty, the Applicants seek temporary and permanent orders exempting them from the disqualification provisions of section 9(a) of the 1940 Act with respect to the New Jersey Order.

2. Section 9(c) of the 1940 Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants further

⁴ In the Matter of PA Fund Management LLC et al., Administrative Proceeding File No. 3-11661, Investment Advisers Act Release No. 2295 (September 15, 2004). PEA, PAD and PAFM also agreed to a Final Judgment Pursuant to Stipulation that settled an action, relating to the same conduct, brought by the California Attorney General. *The People of the State of California, v. PA Distributors LLC*, No. 04AS03699 (Super. Ct. CA., September 15, 2004) (the "California Order").

submit that the conduct of Applicants has been such as not to make it against the public interest or protection of investors to grant the exemption and that the conduct that served as the basis for the disqualification has been remedied.

3. With respect to the Consent Parties, Applicants state that the New Jersey Order and the Commission Order provide for a series of actions to be taken by the Consent Parties in connection with the Consent Parties' continued relationship with certain Consent Party Funds. In settling their proceedings against the Consent Parties, neither the NJAG nor the Commission sought to bar them from providing advisory and underwriting services to Funds. Applicants further state that the senior managers that were alleged to have approved the activities underlying the Commission Order are no longer employed by the Consent Parties. Applicants submit that the measures the Consent Parties voluntarily undertook and those they are required to undertake under the New Jersey Order and the Commission Order were designed to ensure both the integrity of their compliance processes and investor protection on a going forward basis.⁵ Applicants thus believe that these measures address the public interest and investor protection concerns underlying section 9(a) of the 1940 Act.

4. Applicants state that the alleged activities giving rise to the New Jersey Order and the Commission Order did not involve any activities on the part of the Separate Parties. Applicants submit that no current or former officer, director or employee of the Separate Parties who was or is involved in providing advisory, subadvisory, depository or principal underwriting services to any of the Funds was involved in the conduct that forms the basis of the New Jersey Order or the Commission Order. Applicants further represent that the Separate Parties conduct their own investment advisory and underwriting activities separate from the activities of the Consent Parties in their capacities as fiduciaries for the Non-Party Funds and other clients. Moreover, as far as the Separate Parties are aware, none of the officers, directors, portfolio managers, any other investment personnel or any other employee of any Separate Party had any knowledge of any allegedly illegal

conduct underlying the New Jersey Order or the Commission Order.⁶ Accordingly, Applicants submit that the granting of an exemption under the Application with respect to the Separate Parties would be consistent with the public interest and the protection of investors.

5. Applicants argue that any inability to continue providing advisory and underwriting services to the Funds would disrupt the Funds unnecessarily and operate to the detriment of the financial interests of the Funds and their shareholders. Applicants state that the Funds would incur significant time, effort and expense to replace the Applicants with other investment advisers, subadvisers, principal underwriters and depositors. Applicants also believe that uncertainty resulting from a bar to the Applicants' serving the Funds in such capacities might result in large net redemptions of Fund shares and net outflows of cash, which could adversely affect efforts to manage the Funds' assets and could increase the Funds' expense ratios to the detriment of remaining shareholders.

6. Applicants will prepare written materials regarding the New Jersey Order and the Commission Order, and their impact on the Funds (together with the Application, the "Written Materials") for the Boards of the Funds, including the trustees who are not "interested persons" as defined in Section 2(a)(19) of the 1940 Act ("Independent Trustees") and their independent legal counsel as defined in rule 0-1(a)(6) under the 1940 Act ("Independent Counsel"). Applicants state that they will, as soon as reasonably practicable, distribute the Written Materials to, and discuss them with, the Boards of the Consent Party Funds, including the Independent Trustees and their Independent Counsel. Applicants also will distribute, as soon as reasonably practicable, the Written Materials and an offer to meet in person to discuss them, to the Boards of the Sub-Advised Funds and the Non-Party Funds, including their Independent Trustees and their Independent Counsel, if any. Applicants also undertake to provide the Boards of all the Funds with all information concerning the New Jersey Order and the Commission Order and the application necessary for the Funds to fulfill their disclosure and other

obligations under the federal securities laws.

7. Finally, Applicants state that, if they were deemed to be barred under section 9(a) of the 1940 Act from providing investment advisory and distribution services to the Funds, and were unable to obtain the requested exemption, the effect on their business and employees would be severe. The Applicants have committed substantial resources to establishing their businesses of advising and underwriting registered investment companies. The Applicants state that prohibiting them from providing advisory and distribution services to the Funds would adversely affect not only Applicants' businesses, but also the livelihoods of over 3500 employees. For these reasons, the Applicants believe the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe.

Applicants' Conditions

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

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the 1940 Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the 1940 Act in connection with the application.

2. PEA, PAD and PAFM will comply with the terms and undertakings set forth in the Commission Order.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly, it is hereby ordered, pursuant to section 9(c) of the 1940 Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective immediately, solely with respect to the New Jersey Order, subject to the conditions in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, September 13, 2006.

⁵ Similarly, Applicants submit that the measures the Consent Parties voluntarily undertook and those they are required to undertake under the Shelf Space Order and California Order were designed to ensure both the integrity of their compliance processes and investor protection on a going forward basis.

⁶ Similarly, Applicants submit that the alleged activities giving rise to the Shelf Space Order did not involve any of the Separate Parties. No current or former officer, director or employee of any Separate Party had knowledge of any allegedly illegal conduct underlying the Shelf Space Order, or was involved in such activities.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E4-2360 Filed 9-23-04; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 4837]

Redesignation of The Islamic Movement of Uzbekistan (IMU), as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State has concluded that there is a sufficient factual basis to find that the relevant circumstances described in Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189, hereinafter "INA"), exist with respect to the Islamic Movement of Uzbekistan.

Therefore, effective September 24, 2004, the Secretary of State hereby redesignates that organization as a Foreign Terrorist Organization pursuant to Section 219(a) of the INA.

Dated: September 20, 2004.

William P. Pope,
Deputy Coordinator for Counterterrorism,
Department of State.

[FR Doc. 04-21503 Filed 9-23-04; 8:45 am]

BILLING CODE 4710-10-P

DEPARTMENT OF TRANSPORTATION

[Docket OST-2003-15944]

Office of the Secretary; Application of Delta Air Lines, Inc. for Exemption from 14 CFR 212.3 Permitting Limited Waiver of Advance Charter Payment

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2004-9-18).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order granting to Delta Air Lines, Inc. ("Delta") a one-year exemption from 14 CFR 212.3(e) with respect to single-entity charters using jet aircraft having more than 100 seats provided to Fortune 500 Companies, permitting in such cases only, that advance payment of the charter price may be waived in whole or in part by the carrier and charter customer jointly, as described more fully in Order 2004-

9-18. Under the order, where such a waiver has been made only in part, the amount of any bond required under this exemption, or the amount of a corresponding substitute letter of credit (under Order 2003-11-16), need not exceed the amount of the charter price actually collected by the carrier.

DATES: Persons wishing to file objections should do so no later than October 4, 2004. Answers to objections should be filed no later than October 11, 2004.

ADDRESSES: Comments, objections, and answers to objections should be filed in Docket OST-2003-15944 and addressed to the Department of Transportation Dockets (M-30, Room PL-401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: David Robert Foss, Office of Aviation Enforcement and Proceedings (C-70, Room 4116), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9342.

Dated: September 20, 2004.

Robert S. Goldner,
Special Counsel to Assistant Secretary for Aviation and International Affairs.
[FR Doc. 04-21522 Filed 9-23-04; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance: Chandler Field, Alexandria, MN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the disposal of the airport property. The proposal consists of a 1.61-acre portion of Parcel 5 located east of Minnesota Trunk Highways 29 and 27. Parcel 5 was acquired in 1980 without Federal participation. There are no impacts to the airport by allowing the airport to dispose of the property. The land is to be used for right-of-way for relocated 34th Avenue. The intersection of Minnesota Trunk Highways 29 and 27 was relocated southward years ago to

provide additional clearance to the runway end. The relocation of the 34th Avenue intersection increases traffic safety. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before October 25, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Huber, Assistant Manager, Airports District Office, 6020 28th Avenue South, Minneapolis, MN 55450. Telephone Number 612-713-4357/FAX Number 612-713-4364. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Alexandria, Douglas County, Minnesota, and described as follows: A 100.00 foot wide tract of land which is a part of the Northwest Quarter of Section 31, Township 128 North, Range 37 West, Douglas County, Minnesota, being 50.00 feet on each side of the following described line: Commencing at the northwest corner of said Section 31; thence North 89 degrees 28 minutes 21 seconds East, assumed bearing, along the north line of said Northwest Quarter of Section 31 a distance of 692.12 feet; thence South 00 degrees 31 minutes 39 seconds East 165.00 feet to a point on the south line of the north 165 feet of said Northwest Quarter and the point of beginning of the line to be described; thence southwesterly along a nontangential curve concave to the southeast, radius 250.00 feet, central angle 20 degrees 27 minutes 07 seconds, a distance of 89.97 feet and the chord of said curve bears South 17 degrees 19 minutes 17 seconds West 89.48 feet; thence South 07 degrees 00 minutes 44 seconds West along tangent 75.06 feet; thence southwesterly along a tangential curve concave to the northwest, radius 300.00 feet. Central angle 102 degrees 04 minutes 34 seconds, a distance of 534.47 feet more or less to the easterly right-of-way line of Trunk Highway Number 27 and 29 and there terminating. The sidelines of said tract