strictly the permissible characteristics of a money market Fund's portfolio securities are not present.

4. Sections 22(f) prohibits undisclosed restrictions on the transferability or negotiability of redeemable securities issued by open-end investment companies. Applicants state that the Agreement would set forth any restrictions on transferability or negotiability of the Eligible Director's benefits, and such restrictions are included primarily to benefit the Eligible Directors and would not adversely affect the interests of any shareholder of any Fund.

5. Sections 22(g) and 23(a) generally prohibit registered open-end investment companies and registered closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. Applicants believe that these provisions are primarily concerned with the dilative effect on the equity and voting power of the common stock of, or shares of beneficial interest in, an investment company if securities are issued for consideration not readily valued. Applicants assert that interests under the Agreement will not entitle Eligible Directors to any vote as shareholders or to participate in the profits and gains of any of the Funds. Applicants also submit that the Agreement would provide for deferral of payment of fees that would be payable independent of the Agreement, and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

6. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. Applicants state that the Funds that are advised by the same entity may be ''affiliated persons'' of one another under section 2(a)(3)(C) of the Act. Applicants assert that section 17(a)(1) was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interests in such enterprises. Applicants contend that, as a result of the Funds' undertaking to vote the shares of an affiliated Fund in proportion to the votes of all other holders of such shares, control of the issuer of the Underlying Securities will remain unchanged. Applicants further submit that permitting the proposed transactions would facilitate the matching of each Fund's liability for deferred Director's fees with the Underlying Securities that would determine the amount of such Fund's liability.

7. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the transaction is consistent with the policy of each registered investment company concerned; and (c) the transaction is consistent with the general purposes of the Act. Applicants assert that the proposed transactions satisfy the criteria of section 17(b).

8. Applicants note that sales of shares of the Funds made available for deemed investment under the Agreement will be made on the same terms and conditions as are applicable to sales of the same securities to unaffiliated parties, and the Agreement provides that management may change the designation of Underlying Securities if the purchase of such securities would violate the policies of the participating Fund.

9. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by policy and provisions of the Act. Applicants assert that the proposed transactions satisfy this standard.

10. Section 17(d) of the Act and rule 17d–1 thereunder make it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant. Rule 17d–1 under the Act provides that the SEC may, by order upon application, grant exemptions from the prohibitions of section 17(d) and rule 17d–1. Rule 17d–1(b) further provides that, in passing upon such an application, the SEC will consider whether the participation of the registered investment company in such enterprise, arrangement, or plan is consistent with the policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

11. Applicants contend that the participating Eligible Director will neither directly nor indirectly receive benefits which would otherwise inure to the Funds or their shareholders. Applicants state that deferral of an Eligible Director's fees in accordance with the Agreement would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis. Applicants submit that when all payments have been made to a participating Eligible Director, the Director will be in a position relative to the Funds no better than if any deferred fees had been paid to such Director on a current basis and invested in shares of the Underlying Securities. Applicants believe that the Agreement will not constitute a joint or joint and several participation by any Fund with an affiliated person on a basis different from or less advantageous than that of the affiliated person.

Applicants' Conditions

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

1. With respect to the requested relief from rule 2a–7, any money market series of a Fund that values its assets using the amortized cost method or the penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such series' liability to pay deferred fees and the assets that offset the liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11840 Filed 5–6–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22650/813–164]

Project Capital 1995, LLC; Notice of Application

April 30, 1997.

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

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

APPLICANTS: Project Capital 1995, LLC, which was formerly SASM&F Investment Fund, LLC (the ''Investment Fund''), all existing pooled investments vehicles identical in all material respects (other than investment objective and strategy) that have been or

may be offered to the same class of investors as those investing in the Investment Fund (the ''Existing Funds''), and all subsequent pooled investment vehicles identical in all material respects (other than investment objective and strategy) that may be offered in the future to the same class of investors as those investing in the Investment Fund (the ''Subsequent Funds'') (together, the Investment Fund, the Existing Funds, and the Subsequent Funds are referred to herein as the ''Funds'').

RELEVANT ACT SECTIONS: Order requested pursuant to 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 sections 17 (a), (d), (f), (g) and (j)), section 30 (other than certain provisions of sections 30 (a), (b), (e), and (h)), and sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would exempt them from most provisions of the Act and would permit certain affiliated and joint transactions incident to the creation and operation of employees' securities companies within the meanings of section 2(a)(13) of the Act.

FILING DATE: The application was filed on September 18, 1995 and amended on February 7, 1996, and March 26, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm on May 27, 1997, 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. Project Capital 1995, LLC, 919 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Mercer E. Bullard, 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.

Applicants' Representations

1. The Investment Fund is a Delaware limited liability company formed pursuant to a limited liability company agreement (the ''Investment Fund Agreement''). The Investment Fund will operate as a non-diversified, closed-end, management investment company within the meaning of the Act. The Applicants anticipate that each Subsequent Fund, if any, will also be structured as a limited liability company, although a Subsequent Fund could be structured as a domestic or offshore general partnership, limited partnership or corporation. The organizational documents for any Subsequent Funds will be substantially similar in all material respects to the Investment Fund Agreement, other than the provisions relating to investment objectives or strategies of a Subsequent Fund and for any operational differences related to the form of organization of a Subsequent Fund.

2. Interests in the Funds (''Units'') will be offered and sold by the Funds in reliance upon an exemption from registration under the Securities Act of 1933 (''Securities Act''). No fee of any kind will be charged in connection with the sale of Units of the Funds. Each Fund will offer Units solely to persons (''Eligible Investors'') who meet the following criteria at the time of investment: (a) Certain current or former key administrative employees, partners and lawyers employed by Skadden, Arps, Slate, Meagher & Flom LLP, a New York limited liability partnership (''Skadden Arps LLP''), Skadden, Arps, Slate, Meagher, & Flom (International), Skadden, Arps, Slate, Meagher & Flom (Illinois), and Skadden, Arps, Slate, Meagher & Flom (Delaware) (collectively with Skadden Arps LLP, ''Skadden Arps''), the immediate family members of such persons, or trusts or other entities the sole beneficiaries of which consist of such persons or the immediate family members of such persons; and (b) who are (i) ''accredited investors'' as that term is defined in rule 501(a)(6) of Regulation D under the Securities Act and (ii) sophisticated in investment matters. An individual may make additional capital contributions to a Fund only if he or she meets the criteria for an Eligible Investor contained herein at the time such additional capital contributions are made. The specific investment objective and strategies for each Fund will be set forth in the organizational documents with respect to such Fund, and each Eligible Investor will receive a copy prior to his or her investment in such Fund.

3. Substantially all of the present and former partners and a small number of all the employees of Skadden Arps currently qualify as Eligible Investors. Such Eligible Investors have significant exposure directly or indirectly in matters related to investment banking, financial services, securities or investment businesses. Most Eligible Investors have had substantial experience acting as legal counsel in one or more of the foregoing businesses.

4. The formation of the Investment Fund and any Subsequent Fund is intended to create an opportunity for the Eligible Investors to invest in ventures in which they, as individuals, might not have otherwise been able to invest in and to reap returns on their investment which may be greater proportionately than returns they can obtain on individual investments. Each Fund may invest in opportunities offered to or by, or that come to the attention of, Skadden Arps, including opportunities in which Skadden Arps (including Eligible Investors who elect to participate in a Fund (''Members'')) may invest for their own respective accounts. Such opportunities may include separate accounts with registered or unregistered investment advisers, investment in other pooled investment vehicles such as registered investment companies, investment companies exempt from registration under the Act, commodity pools, real estate investment funds, and other securities investments. The Funds do not intend to act as a lender to their affiliates except to the extent that the Funds may invest in debt securities issued by entities that might fall within the definition of affiliate (if Skadden Arps owns 5% of the outstanding voting securities in such entity). The Funds will limit their investments in publicly offered registered investment companies to the limitations set forth in section 12(d)(1) of the Act.

5. Some of the investment opportunities described above may involve parties in which Skadden Arps was, is or will be, acting as legal counsel. To the extent a Fund may engage Skadden Arps to perform legal services on behalf of an entity in which it has invested (each such entity, a ''Portfolio Company''), any such services will be performed in accordance with the terms of the Act, including section 17(e). Any such amounts paid to Skadden Arps will not be directly payable by a Fund, but by the Portfolio Company. Moreover, all such services shall be provided to the Portfolio Company on behalf of the

Fund at Skadden Arps' actual cost and shall not include any profit component. Such fees shall not be for brokerage services of any kind or in any matter connected to the purchase or sale of securities or other property which a Fund may hold.

6. While a Fund will not pay Skadden Arps any form of compensation, including commissions, for services (including legal services that Skadden Arps might render to a Portfolio Company), it may pay Skadden Arps fees equal to, but not greater than, the actual out-of-pocket costs directly incurred by Skadden Arps in disposing of an investment in a Portfolio Company. Skadden Arps may be reimbursed in various forms provided that there will be no allocation of any of Skadden Arps' operating expenses to a Fund. Rather, any such reimbursement shall be for reasonable and necessary out-of-pocket costs directly associated with making investments on behalf of a Fund. Such reimbursements could be for filing fees, registration fees, mailing costs, telephone charges and other similar costs relating solely to such investments. Skadden Arps will bear all expenses in connection with the organization and internal operations of the Funds, including all administrative and overhead expenses.

7. Administration of the Investment Fund will be vested in the administrator (the ''Administrator''). The Administrator may, but is not required to, be a member in the Investment Fund. The Administrator will inform Eligible Investors from time to time of the availability of investment opportunities that come to its attention through Skadden Arps. The Administrator will make specific investment opportunities available to Eligible Investors who will elect whether or not to participate in the particular investment (each particular investment, an ''Investment''). The Administrator will not recommend Investments or exercise investment discretion, provided however that the Administrator may select ''temporary investments'' (as defined below).[1] All investment decisions to make a particular Investment in the Investment Fund will be made by the Members on an individual basis. The Investment Fund Agreement provides that the Investment Fund will bear its own expenses. No management fee or other compensation will be paid by the Investment Fund or the Members to the Administrator for its services in such capacity.

8. Capital contributions made to the Investment Fund by participating Members will be allocated pro-rata to the capital accounts relating to a particular Investment for such participating Members. Members who elect not to participate in a particular Investment will have no interest in such Investment.

9. For any particular Investment with respect to which a Member has elected to participate by making a capital contribution, there shall be established for each such Member on the books of the Investment Fund a capital account, which shall equal the sum of all capital contributions of such Member made with respect to such Investment: (a) Increased by such Member's allocable share of income and gain attributable to such Investment as provided in the Investment Fund's organizational documents; and (b) decreased by (i) such Member's share of deduction, loss and expense attributable to such Investment, and (ii) the cash amount or fair market value at the time of the distribution of all distributions of cash or other property made by the Investment Fund to such Member with respect to such Investment. As of the end of each fiscal year, items of Investment Fund income, gain, loss, deduction and expenses attributable to an Investment shall be allocated to the relevant capital accounts in proportion to the respective aggregate amounts of the relevant Members' capital contributions to such Investment; provided that, in accordance with applicable Delaware law, the capital account balances of the Members shall not be reduced below zero.

10. It is anticipated that capital will be contributed to the Investment Fund (and any Subsequent Fund) only in connection with the funding of an Investment. Pending the payment of the full purchase price for an Investment, funds contributed to the Investment Fund (or any Subsequent Fund) will be invested in: (i) United States government obligations with maturities of not longer than one year and one day, (ii) commercial paper with maturities not longer than six months and one day and having a rating assigned to such commercial paper by a nationally recognized statistical rating organization equal to one of the two highest ratings categories assigned by such organization, or (iii) any money market fund (collectively, ''Temporary Investments'').

11. The value of the Member's capital accounts will be determined at such times as the Tax Matters Partner (who will be the managing director of Skadden Arps) deems appropriate or necessary; however, such valuation will be done at least annually at the Investment Fund's fiscal year-end for allocation purposes. Each Member directs his or her capital contributions to particular Investments and in all material respects takes responsibility for his or her individual investment decisions, leaving the Administrator with primarily an administrative role. The Tax Matters partner will only cause the assets held by the Investment Fund to be valued when such valuation is necessary or appropriate for the administration of the Investment Fund. Valuations of a Member's interest at other times remains the responsibility of the individual Member. The Investment Fund will maintain records of all financial statements received from the issuers of the Investments, and will make such records available for inspection by its Members. Each Fund, as soon as practicable after the end of each tax year of that fund, will transmit a report to each Member setting out information with respect to that Member's distributive share of income, gains, losses, credits and other items for federal income tax purposes, resulting from the operation of the Fund during that year.

12. The Tax Matters partner will value the assets held in a Member's capital account at the current market price (closing price) in the case of marketable securities. Private placements (consisting mostly of limited partnership interests), which typically will comprise most of the investments, will be valued in accordance with the values provided by the vehicles in which a Fund invests. All other securities will be valued at the lower of cost or book value. The foregoing valuation method is applicable in each instance in which a value is assigned to interests in a Fund.

13. The amount of the initial capital contribution to the Investment Fund (and to any Subsequent Fund) will be dependent upon the size and terms of the initial investment opportunity of such Fund. Members will not be entitled to redeem their interest in the Investment Fund. A member will be permitted to transfer his or her interest only with the express consent of a majority of the non-transferring Members.

14. The Investment Fund Agreement provides that the Administrator may require a Member to withdraw from the Investment Fund if the Administrator, in its sole discretion, deems such withdrawal in the best interest of the Investment Fund. The Administrator

[1] The Applicants will consider, as necessary, whether Skadden Arps or the Administrator will be required to register as an investment adviser under the Investment Advisers Act of 1940.

does not intend to require a Member to withdraw. The following circumstances could warrant the withdrawal of a Member: (a) If a Member ceases to be an Accredited Investor or is no longer deemed to be able to bear the economic risk of investment in a Fund; (b) adverse tax consequences were to inure to the Investment Fund if a particular Member were to remain; and (c) a situation in which the continued membership would violate applicable law or regulation. If a Member is required to withdraw, the Investment Fund will make a distribution-in-kind to the withdrawing Member or such Member will otherwise be paid his or her pro-rata interest in the Investment Fund, as determined by the Administrator to be fair and reasonable in the circumstances. If a Member is terminated by Skadden Arps, such Member will either continue to be a Member of the Fund, or receive a distribution-in-kind or otherwise be paid his pro-rata interest in the Fund, as determined by the Administrator to be fair and reasonable.

15. In the event of death of a Member, such Member's estate shall be substituted as a Member, and such substituted Member shall succeed to the economic attributes of the deceased Member's interest in the Fund, but shall not be admitted as a substitute Member unless the majority of the remaining Members consent to such admission.

16. Applicants request an exemption under sections 6(b) and 6(e) of the Act from all provisions of the Act except section 9, section 17 (other than certain provisions of sections 17 (a), (d), (f), (g) and (j) as described in the application), section 30 (other than certain provisions of sections 30 (a), (b), (e) and (h) as described in the application), and sections 36 through 53, and the rules and regulations thereunder.

Applicants' Legal Analysis

1. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers, by former employees of such employers, or by members of the immediate family of such employers, persons on retainer, or former employees.

2. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, specified provisions of the Act shall be applicable to such company and to other persons in their transactions and relations with such company as though such company were registered under the Act, if the SEC deems it necessary and appropriate in the public interest or for the protection of investors.

3. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such company or to purchase from such company any security or other property. Applicants request an exemption from the provisions of section 17(a) to the extent necessary to permit a Fund: (1) To invest in companies, partnerships or other investment vehicles offered, sponsored or managed by Skadden Arps or any affiliated person as defined in section 2(a)(3) of the Act (''Affiliated Person'') thereof; (2) to invest in securities of issuers for which Skadden Arps or any Affiliated Person thereof have performed services and from which they may have received fees; (3) to purchase interests in any company or other investment vehicle: (i) In which Skadden Arps or its partners or employees own 5% or more of the voting securities or (ii) that is otherwise an Affiliated Person of the Fund or Skadden Arps; (4) to participate as a selling security-holder in a public offering in which Skadden Arps or any Affiliated Person acts or represents a member of the selling group; (5) to purchase short-term instruments from, or sell such instruments to, Skadden Arps or any Affiliated Person thereof at market value; and (6) to enter into repurchase transactions with Skadden Arps or any Affiliated Person thereof pending investment of the Fund's liquid funds. Applicants state that a Fund purchasing any short-term instrument from Skadden Arps or any Affiliated Person thereof will pay no fee in connection with that purchase.

4. Applicants assert that the community of interest among the Members and Skadden Arps will serve to reduce the risk of abuse in transactions involving a Fund and Skadden Arps or any Affiliated Person thereof. Applicants also note that the Members will be informed in the Fund's communications relating to a particular Investment opportunity of the possible extent of the Fund's dealings with Skadden Arps or any Affiliated Person thereof.

5. Section 17(d) and rule 17d–1 make it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person unless the transaction has been approved by order of the SEC. Applicants request an exemption pursuant to section 17(d) and rule 17d–1 to the extent necessary to permit a Fund to make an investment in an entity in which a Fund or Skadden Arps, or any Affiliated Person of the Fund or Skadden Arps, or an Affiliated Person of such person is a participant or plans concurrently or otherwise directly or indirectly to become a participant.

6. Applicants state that joint transactions in which a Fund could participate might include the following: (1) An investment by one or more Funds in a security (a) in which Skadden Arps or an Affiliated Person thereof, another Fund, or their transferees who agree to be bound by the terms of the conditions in the application (the ''Affiliates'' or individually an ''Affiliate'') is a participant or plans to become a participant or (b) with respect to which Skadden Arps or any Affiliated Person thereof is entitled to receive fees of any kind, including, but not limited to, legal fees, placement fees, investment banking fees, or brokerage commissions, or other economic benefits or interests; (2) an investment by one or more Funds in an investment vehicle sponsored, offered or managed by Skadden Arps or any Affiliated Person thereof; and (3) an investment by one or more Funds in a security in which an Affiliate is a participant, or plans to become a participant, including situations in which an affiliate has a partnership or other interest in, or compensation arrangement with, such issuer, sponsor or offeror.

7. Applicants assert that the relief sought is consistent with section 17's objective of preventing an Affiliated Person of a registered investment company from injuring the interests of the company's shareholders by causing the company to participate in a joint endeavor on a basis different from, and less advantageous than, that of a related party. Applicants state that each Eligible Investor, not the Fund, evaluates Investment opportunities and decides individually whether or not he or she wishes to participate in any particular Investment. In addition, Applicants assert that, in light of Skadden Arps' purpose of establishing the Funds to reward Eligible Investors and to attract highly-qualified personnel to Skadden Arps, the possibility is minimal that an affiliated-party investor will enter into a

transaction with a Fund with the intent of disadvantaging the Fund.

8. Applicants submit that strict compliance with section 17(d) would cause the Funds to forego Investment opportunities simply because a Member, Skadden Arps or other Affiliated Persons of the Fund also had or contemplated making a similar investment. In addition, because attractive 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, applicants state that 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 assert that the flexibility to structure co- and joint investments in the manner described above will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

9. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Applicants request an exemption from the requirement contained in section 17(f) and rule 17f–1 thereunder that a Fund's custodial agreement must be in writing and transmitted to the SEC. Applicants state that, because there is a close association between Skadden Arps and the applicants, requiring a written contract and transmission to the SEC would unnecessarily burden and cause unnecessary expense to applicants.

10. Section 17(g) and rule 17g–1 thereunder generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicants request exemption from the requirement contained in section 17(g) and in rule 17g–1 that an administrator who is not an ''interested person'' of the respective Funds take certain actions and make certain approvals concerning bonding. Applicants request that the actions and approvals required to be taken by the Administrator may and will be taken by it, regardless of whether it is deemed to be an ''interested person'' of the Funds. Applicants state that, because the administrator is likely to be considered an ''interested person'' of each Fund, applicants could not comply with rule 17g–1 without such relief.

11. Section 17(j) and rule 17j–1 thereunder make it unlawful for certain enumerated persons to engage in fraudulent, deceitful, or manipulative practices in connections with the purchase or sale of a security held or to be acquired by an investment company. Rule 17j–1 also requires every registered investment company, its adviser, and its principal underwriter to adopt a written code of ethics with provisions reasonably designed to prevent fraudulent activities, and to institute procedures to prevent violations of the code. Applicants request an exemption from the requirements of rule 17j–1, with the exception of rule 17j–1(a), because they are burdensome and unnecessary and because the exemption is consistent with the policy of the Act. Applicants assert that requiring the Funds to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time-consuming and expensive and would serve little purpose in light of, among other things, the community of interests among the Members of the Funds by virtue of their common association with Skadden Arps and the fact that the Investments of a Fund would generally not be investments that usually would be offered to Members, including Members who would be deemed access persons, as individual investors. Applicants contend that the requested exemption is consistent with the purposes of the Act because the dangers against which section 17(j) and rule 17j–1 are intended to guard are not present in the case of the Funds.

12. 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 SEC and mail to their shareholders certain periodic reports and financial matters. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Members. Applicants request exemptive relief to the extent necessary to permit each fund to report annually to its Members in the manner prescribed for the Investment Fund by the Investment Fund Agreement. Applicants also request exemption from section 30(h) to the extent necessary to exempt the Administrator and any other persons who may be deemed to be members of an advisory board of a Fund from filing Forms 3, 4 and 5 under section 16 of the Securities Exchange Act of 1934 (''Exchange Act''), as amended, with respect to their ownership of Units in the Funds.

Applicants' Conditions

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

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the ''Section 17 Transactions'') will be effected only if the Administrator determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to Members of the participating Fund and do not involve overreaching of the Fund or its Members on the part of any person concerned; and (b) the transaction is consistent with the interests of the Members of the participating Fund, the Fund's organizational documents and the Fund's reports to its Members.

In addition, the Administrator will record and preserve a description of such affiliated transactions, its findings, the information or materials upon which its findings are based and the basis therefor. 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 SEC and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. No purchases or sales will be made from or to an entity affiliated with a Fund by reason of a 5% or more investment in such entity by the Administrator.

3. The Administrator 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 Administrator will not make available to the Members 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 Members of the participating Fund holding such investment 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 Members of the participation Fund holding such

investment have the opportunity to dispose of their investment prior to or concurrently, on the same terms as, and on a *pro rata* basis with the Co-Investor. The term ''Co-Investor'' means any person who is: (a) an Affiliated person of the Fund; (b) Skadden Arps and any entities controlled by Skadden Arps; (c) a current partner, lawyer, or employee of Skadden Arps; (d) an investment vehicle offered, sponsored, or managed by Skadden Arps or an Affiliated Person of Skadden Arps; (e) any entity with respect to which Skadden Arps provides, or has provided, services, and from which it may have received fees in connection with such investment; or (f) a company in which the Administrator acts as an officer, director, or general partner, or has a similar capacity to control the sale or disposition of the company's securities. The restriction 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 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; or (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.

5. Each Fund will send to each Member who had an interest in that Fund at any time during the fiscal year then ended, financial statements. Such financial statements may be unaudited. In addition, within 90 days after the end of each fiscal year of each Fund or as soon as practicable thereafter, each Fund shall send a report to each person who was a Member at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Member 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 will maintain and preserve, for the life of each such Fund and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Fund to be provided to its Members, and agree that all such records will be subject to examination by the SEC and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11841 Filed 5–6–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 12, 1997.

An open meeting will be held on Monday, May 12, 1997, at 2:00 p.m. A closed meeting will be held on Thursday, May 15, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (4), (8), (9)(i), and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, May 12, 1997, at 2:00 p.m., will be:

(1) Consideration of whether to adopt amendments to rule 17f–5 under the Investment Company Act of 1940 (the ''Act''), the rule which governs the custody of assets of registered management investment companies (''funds'') outside the United States. The amendments would (i) Revise the findings that must be made in connection with foreign custody arrangements, (ii) permit fund boards of directors to delegate their responsibilities to select and monitor foreign custodians, and (iii) expand the class of eligible foreign custodians.

FOR FURTHER INFORMATION, contact Robin S. Gross at (202) 942–0640.

(2) Consideration of whether to adopt rules and rule amendments under the Investment Advisers Act of 1940 to implement certain provisions of the Investment Advisers Supervision Coordination Act (the ''Coordination Act''). The Coordination Act amended the Advisers Act to, among other things, reallocate the responsibilities for regulating investment advisers between the Commission and the securities regulatory authorities of the states. Generally, the Coordination Act provides for the Commission regulation of advisers with $25 million or more of assets under management, and state regulation of advisers with less than $25 million of assets under management. The rules and rule amendments would: (i) Establish the process by which advisers that are currently registered with the Commission determine their status as Commission- or state-registered advisers after July 8, 1997, the effective date of the Coordination Act; (ii) amend Form ADV to require advisers to report annually to the Commission information relevant to their status as Commission-registered advisers; (iii) relieve advisers of the burden of having frequently to register and then de-register with the Commission as a result of changes in the amount of their assets under management; (iv) provide certain exemptions from the prohibition on registration with the Commission; (v) define certain terms used in the Coordination Act; and (vi) clarify how advisers should count clients for purposes of both the new national de minimis exemption from state regulation and the federal de minimis exemption from Commission registration.

FOR FURTHER INFORMATION, contact Catherine M. Saadeh at (202) 942–0650, or Cynthia G. Pugh at (202) 942–0673.

The subject matter of the closed meeting scheduled for Thursday, May 15, 1997, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: May 2, 1997.

Jonathan G. Katz,

Secretary.

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