level of liquid assets due to the rule's liquidity requirements, while unaware of the number of shares tendered in the current repurchase offer and the resulting decrease in liquid assets.

11. Applicants state that, because the Portfolio would determine the repurchase offer amount at the beginning of each quarter, information about the number of shares tendered in the previous offer is not material. In addition, because staggered tender offers would permit the Portfolio to maintain fewer liquid assets than it would otherwise be required to maintain, applicants believe that maintaining liquid assets sufficient for two tender offers in a quarter would not unduly burden the Portfolio.

12. Rule 23c–3(b)(1) provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase. Applicants request relief from this provision to the extent that it would prohibit the imposition of an EWC on tendered shares that have been held for less than a specified period.

13. Applicants note that, in the release adopting rule 23c–3, the SEC stated that ''consideration [regarding the use of contingent deferred sales loads by closed-end interval funds] may be appropriate after the [SEC] considers whether to adopt proposed rule 6c–10.'' Rule 6c–10 was adopted on February 23, 1995,[9] and applicants have agreed as a condition to any relief granted that they will comply with rule 6c–10 under the Act as if such rule were applicable to them. The Funds also will comply with the NASD Conduct Rule's limits on service fees.

14. Applicants believe that EWCs may be necessary for its distributor to recover distribution costs from shareholders who redeem early. In addition, EWCs may create a disincentive for shareholders to engage in frequent trading, which applicants believe imposes costs on shareholders.

15. Section 6(c) provides that the SEC may exempt any person, security, or transaction from my 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 the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

[9] Investment Company Act Release No. 20916 (Feb. 23, 1995). Rule 6c–10 permits open-end funds to charge contingent deferred sales loads, subject to certain requirements for calculating those changes and a uniform treatment requirement.

Applicants' Conditions

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

1. The Portfolio will offer to repurchase an identical percentage of the interests held by each feeder fund during each quarter.

2. The determination of the percentage in condition 1 will be made by the Portfolio's board in time for the first feeder fund to make a tender offer in the upcoming quarter to notify its shareholders of the repurchase offer amount no less than 21 days before the repurchase request deadline for that tender offer.

3. If the Portfolio agrees to purchase from a feeder fund a percentage of shares in addition to the repurchase offer amount pursuant to rule 23c–3(b)(5), it will agree to maintain liquid assets sufficient to repurchase the same percentage of additional shares from all feeder funds requesting the purchase of additional shares during the succeeding two tender offers.

4. Any feeder fund imposing an EWC will comply with rule 6c–10 under the Act as if such rule were applicable. Any feeder fund imposing a service fee will comply with the National Association of Securities Dealers Conduct Rule 2830(d) as if such rule were applicable.

5. Any fund operating under relief granted through the application will maintain an investment policy that requires, under normal conditions, that at least 65 percent of the value of its total assets will be invested in senior secured floating-rate loan interests.

6. The boards of the feeder funds and the Portfolio will review annually the repurchase offer procedures set forth in the application to ensure that no feeder fund is being disadvantaged as a result of such procedures.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13694 Filed 5–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22669; 812–10410]

Masters' Select Investment Trust et al.; Notice of Application

May 19, 1997.

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

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

APPLICANTS: Masters' Select Investment Trust (the ''Trust''), each open-end management investment company advised by, or in the future advised by Litman/Gregory Fund Advisors, LLC (''Litman/Gregory'') (collectively with the Trust, the ''Funds''), and Litman/Gregory.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from section 15(a) and rule 18f–2 thereunder, and from certain disclosure requirements set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934 (the ''Exchange Act''); items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A; item 3 of Form N–14; item 48 of Form N–SAR; and sections 6–07(2)(a), (b), and (c) of Regulation S–X.

SUMMARY OF APPLICATION: Applicants seek an order permitting Litman/Gregory, as investment adviser to certain portfolios of the Funds, to enter into and modify sub-advisory contracts without obtaining shareholder approval, and permitting the Funds to disclose only the aggregate sub-advisory fee for each portfolio in their prospectuses and other reports.

FILING DATES: The application was filed on October 18, 1996, and amended on January 29, 1997, and March 19, 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 p.m. on June 12, 1997, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 4 Orinda Way, Suite 230–D, Orinda, CA 94563.

FOR FURTHER INFORMATION CONTACT: Brian T. Houihan, Senior Counsel, at (202) 942–0526, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered open-end management investment company organized as a Delaware business trust. The Trust currently consists of one investment portfolio, The Masters Select Equity Fund (the ''Equity Portfolio''). Additional portfolios may be formed in the future with different investment objectives and policies (collectively with the Equity Portfolio, the ''Portfolios'').

2. Litman/Gregory, a registered investment adviser, acts as the investment adviser to the Equity Portfolio and is expected to act as investment adviser to any future Portfolios of the Trust and Portfolios of other existing and future Funds. Litman/Gregory will operate the Portfolios in a manner substantially different from that of conventional investment companies. Litman/Gregory has developed an investment philosophy for the Equity Portfolio that applicants believe capitalizes on Litman/Gregory's extensive experience evaluating investment advisory firms using a specified set of criteria. Litman/Gregory's investment strategy for the Equity Portfolio is based, in part, on its belief that it is possible to identify investment managers who will deliver superior performance relative to their peer group.

3. In each instance in which Litman/Gregory acts or will act as investment adviser to a Portfolio, the Portfolio may have one or more external sub-advisers (the ''Investment Managers'') pursuant to separate sub-advisory agreements (''Management Agreements''). The Equity Portfolio has six Investment Managers. Litman/Gregory's investment strategy for the Equity Portfolio is to allocate assets to Investment Managers who, based on Litman/Gregory's research, represent complementary style groups. Applicants anticipate that Litman/Gregory may apply a similar strategy to future Portfolios.

4. As investment adviser, Litman/Gregory has overall responsibility for assets under management, allocates assets among Investment Managers, monitors and evaluates the performance of the Investment Managers, and recommends selection of Investment Managers to the Trust's board of trustees. Each Investment Manager exercises investment discretion over or makes investment recommendations with respect to a portion of the assets of the Portfolio. In circumstances where the Investment Manager makes recommendations, but does not exercise investment discretion, Litman/Gregory will be responsible for authorizing portfolio transactions based on such recommendations.

5. As investment adviser, Litman/Gregory receives a fee from the Equity Portfolio computed as a percentage of the portfolio's net assets. Litman/Gregory pays the Investment Managers out of this fee. The fee paid to each Investment Manager is separately negotiated and may differ from one Investment Manager to another.

6. Applicants request an exemption from section 15(a) and rule 18f–2 to permit the Funds to enter into and modify Management Agreements without obtaining shareholder approval. Applicants also request an exemption from the various provisions described below that may require them to disclose the fees paid by Litman/Gregory to the Investment Managers.

7. From N–1A is the registration statement used by open-end investment companies. Items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A require disclosure of the method and amount of the investment adviser's compensation.

8. From N–14 is the registration form for business combinations involving open-end investment companies. Item 3 of Form N–14 requires the inclusion of a ''table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction.''

9. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Exchange Act. Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of ''the terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

10. Form N–SAR is the semi-annual report filed with the SEC by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Investment Managers.

11. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the SEC. Sections 6–07(2) (a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

12. With respect to investment advisory fees, applicants propose to disclose (both as a dollar amount and as a percentage of a Portfolio's net assets) only the: (a) Total advisory fee charged by Litman/Gregory with respect to each Portfolio; (b) aggregate fees paid by Litman/Gregory to all Investment Managers managing assets of each Portfolio; and (c) net advisory fee retained by Litman/Gregory with respect to each Portfolio after Litman/Gregory pays all Investment Managers managing assets of the Portfolio (collectively, the ''Aggregate Fee''). For any Portfolio that employs an Investment Manager that is an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Portfolio or Litman/Gregory, other than by reason of serving as an Investment Manager of the Portfolio (an ''Affiliated Manager''), the Portfolio will provide separate disclosure of any fees paid to such Affiliated Manger.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Rule 18f–2 provides that any investment advisory contract that is submitted to the shareholders of a series investment company under section 15(a) shall be deemed to be effectively acted upon with respect to any class or series of such company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter.

2. Applicants believe that the requested exemption from shareholder voting requirements should be granted because Litman/Gregory will operate the Portfolios in a manner so different from that of conventional investment companies that shareholder approval would not serve any meaningful purpose. Applicants argue that, by investing in a Portfolio, shareholders, in effect, will hire Litman/Gregory to manage the Portfolio's assets by using external portfolio managers (*i.e.*, advisory firms not affiliated with

Litman/Gregory), in combination with Litman/Gregory's proprietary investment adviser selection and monitoring process, rather than by using Litman/Greogy's own employees to manage the Portfolio assets. Thus, applicants contend that shareholders will expect Litman/Gregory, under the overall authority of the board of trustees, to take responsibility for overseeing Investment Managers and recommending their hiring, termination, and replacement. Applicants note that each Portfolio's investment advisory agreement with Litman/Gregory will be subject to shareholder approval under section 15(a). Finally, applicants state that the trustees of each Fund, including each trustee who is not an ''interested person'' of the Fund as defined in section 2(a)(19) of the Act (''Independent Trustees''), will consider and approve each Management Agreement (including the specific sub-advisory fee arrangements) in the manner required by the Act and the rules thereunder.

3. Applicants also believe that the requested exemption will benefit shareholders by enabling the Portfolios to operate in a less costly and more efficient manner. Applicants argue that the requested relief will reduce expenses because the Portfolios will not have to prepare and solicit proxies each time a Management Agreement is entered into or modified. Applicants believe that the Portfolios will be able to operate more efficiently by permitting each Portfolio to hire, terminate, and replace Investment Managers according to the judgment of its board and Litman/Gregory. Applicants also argue that the requested relief will relieve shareholders of the very responsibility that they are paying Litman/Gregory to assume: the selection, termination, and replacement of Investment Managers.

4. Applicants also believe that disclosure of the fees that Litman/Gregory pays to each Investment Manager would not serve any meaningful purpose since investors will pay Litman/Gregory to retain and compensate the Investment Managers. Applicants state that, while investment advisers typically are willing to negotiate fees lower than those posted in their fee schedules, particularly with large institutional clients, they are reluctant to do so where the negotiated fees are disclosed to other prospective and existing customers. Thus, applicants argue that the requested relief will facilitate lower overall investment advisory fees because Investment Managers may accept lower advisory fees from Litman/Gregory, the benefits of which will be passed on to shareholders in the form of a lower Investment Manager fee. Applicants believe that disclosure of each sub-advisory fee arrangement would be complex and, given the varying asset allocation to each Investment Manager, would not necessarily provide any meaningful information to a shareholder. Applicants claim that, by limiting disclosure to the Aggregate Fee, the requested relief will enable shareholders to understand more clearly the relevant cost/expense structure of each Portfolio.

5. Section 6(c) authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that this standard has been satisfied for the reasons discussed above.

Applicant's Conditions

Applicants agree that the following conditions may be imposed in any order of the SEC granting the requested relief:

1. Before a Portfolio may rely on the order requested in the application, the operation of the Portfolio in the manner described in the application will be approved by a majority of each Portfolio's outstanding voting securities, as defined in the Act, or, in the case of a new Portfolio whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole shareholder before offering shares of the Portfolio to the public.

2. The prospectus for each Portfolio will disclose the existence, substance, and effect of the order. In addition, each Portfolio will hold itself out to the public as employing the management structure described in the application. The prospectus and any sales materials or other shareholder communications relating to a Portfolio (collectively, ''Marketing Communications'') will prominently disclose that Litman/Gregory has ultimate responsibility for the investment performance of the Portfolio due to its responsibility to oversee Investment Managers and recommend their hiring, termination, and replacement.

3. Within 60 days of the hiring of any new Investment Manager or the implementation of any proposed material change in a Management Agreement, Litman/Gregory will furnish shareholders all information about the new Investment Manager or Management Agreement that would be included in a proxy statement, except as modified by the order with respect to the disclosure of fees paid to the Investment Managers. Such information will include disclosure of the Aggregate Fee and any proposed material change in the Portfolio's Management Agreement with such new Investment Manager. To meet this obligation, Litman/Gregory will provide shareholder with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order with respect to the disclosure of specific fees paid to the Investment Managers.

4. Litman/Gregory will not enter into a Management agreement with any Affiliated Manager without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

5. At all times, a majority of each Fund's board of trustees will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

6. When an Investment Manager change is proposed for a Portfolio with an Affiliated Manager, the Fund's trustees, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Fund's board minutes, that such change is in the best interests of the Portfolio and its shareholders and does not involve a conflict of interest from which Litman/Gregory or the Affiliated Manager derives an inappropriate advantage.

7. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees of each Fund. The selection of independent counsel will be placed within the discretion of the Independent Trustees.

8. Litman/Gregory will provide each Fund's board of trustees no less frequently than quarterly with information about Litman/Gregory's profitability for each Portfolio relying on the relief requested in the application. The information will reflect the impact on profitability of the hiring or termination of Investment Managers during the quarter.

9. Whenever an Investment Manager to a particular Portfolio is hired or terminated, Litman/Gregory will provide that Fund's board of trustees with information showing the expected impact on Litman/Gregory's profitability.

10. Litman/Gregory will provide general management and administrative services to the Portfolio and, subject to board review and approval, will (a) set the Portfolio's overall investment strategies, (b) recommend Investment Managers, (c) allocate and, when appropriate, reallocate the Portfolio's assets among Investment Managers, (d) monitor and evaluate Investment Manager performance, and (e) oversee Investment Manager compliance with the Portfolio's investment objective, policies, and restrictions.

11. No director, trustee, or officer of the Funds or Litman/Gregory will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in an Investment Manager except for (a) ownership of interests in Litman/Gregory or any entity that controls, is controlled by or is under common control with Litman/Gregory; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either an Investment Manager or an entity that controls, is controlled by or is under common control with an Investment Manager.

12. Each Portfolio will disclose in its registration statement the respective Aggregate Fee.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13695 Filed 5–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22666; 812–10422]

Safeguard Scientifics, Inc.; Notice of Application

May 19, 1997.

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

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

APPLICANT: Safeguard Scientifics, Inc.

RELEVANT ACT SECTION: Declaration of the Commission sought under section 2(a)(9).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it controls Cambridge Technology Partners, Inc. (''Cambridge'') and USDATA Corporation (''USDATA''), notwithstanding that applicant owns less than 25% of the voting securities of each company.

FILING DATES: The application was filed on November 12, 1996 and amended on May 16, 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 p.m. on June 13, 1997, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSED: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicant, 800 Safeguard Building, 435 Devon Park Drive, Wayne, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Mary Kay French, 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.

Applicant's Representations

1. Applicant, a Pennsylvania corporation, is engaged primarily in the business of identifying, acquiring interests in, and developing ''partnership companies,'' most of which are engaged in information technology businesses. Applicant is not required to register as an investment company under the Act by virtue of rule 3a–1 under the Act.[1] Applicant's strategy is to invest in companies which are capable of being market leaders in segments of the information technology industry and which can benefit from applicant's business development, management support, financing, and market knowledge. Applicant generally invests in companies in which it can purchase a large enough stake to enable it to have substantial influence over the management and polices of the company.

2. Applicant is the largest single shareholder of Cambridge and USDATA, owning 17% of the voting stock of Cambridge and 20% of the voting stock of USDATA. Cambridge provides technical expertise to organizations with large scale information processing needs. USDATA is an international supplier of real-time software applications development tools and related integration services. Five of the nine members of the Cambridge board and five of the eight members of the USDATA board are associated with applicant.

Applicant's Legal Analysis

1. Applicant requests an order under section 2(a)(9) declaring that it controls Cambridge and USDATA even though Safeguard owns less than 25% of the voting securities of Cambridge and USDATA.

2. Section 2(a)(9) defines ''control'' as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that owners of 25% or less of a company's voting securities do not control such company. The presumption may be rebutted by evidence of control.

3. Applicant argues that its controlling influence over Cambridge and USDATA is demonstrated by the following:

a. Applicant is the largest single shareholder of Cambridge and USDATA. Applicant states that the only other significant shareholders of Cambridge are two registered mutual funds, each of which own approximately 10% of Cambridge. Two venture funds affiliated with applicant own 15% each of USDATA. Applicant submits that it has significant links with both venture funds and that the funds have never acted together in opposition to applicant's control of USDATA and it is unlikely that they would do so in the future. Further, applicant states that the only other significant shareholder of USDATA is its founder and former CEO, who currently owns 13% of the company's stock.

b. Applicant asserts that it has been involved in managing Cambridge and USDATA for years and has developed

[1] Rule 3a–1 provides that an issuer meeting the statutory definition of an investment company is not an investment company if: (a) not more than 45% of the value of its total assets (exclusive of government securities and cash items) consists of securities other than government securities, securities issued by employee securities companies, securities of certain majority-owned subsidiaries, and securities issued by companies under the primary control of the issuer that are not investment companies; and (b) no more than 45% of its income after taxes (over the last four fiscal quarters combined) is relieved from such securities. Applicant does not seek, and any order would not grant, any relief with respect to applicant's reliance on rule 3a–1.