of the municipal security has undertaken to provide prior to recommending a transaction in the municipal security.

These disclosure and recordkeeping requirements will ensure that investors have adequate access to official disclosure documents that contain details about the value and risks of particular municipal securities at the time of issuance while the existence of compulsory repositories will ensure that investors have continued access to terms and provisions relating to certain static features of those municipal securities. The provisions of Rule 15c2–12 regarding an issuer's continuing disclosure requirements assist investors by ensuring that information about an issue or issuer remains available after the issuance.

Municipal offerings of less than $1 million are exempt from the rule, as are offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors, have short-term maturities, or have short-term tender or put features. It is estimated that approximately 12,000 brokers, dealers, municipal securities dealers, issues of municipal securities, and nationally recognized municipal securities information repositories will spend a total of 123,850 hours per year complying with Rule 15c2–12. Based on average cost per hour of $50, the total cost of compliance with Rule 15c2–12 is $6,192,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 10, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30177 Filed 11–17–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22882/812–10050]

The Benchmark Funds, et al.; Notice of Application

November 12, 1997.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicants request an order under sections 6(c), 10(f) and 17(b) of the Act for an exemption from the provisions of sections 10(f) and 17(a) of the Act. The order would permit principal transactions effected in the ordinary course of business between the Benchmark Funds, The Commerce Funds, and Goldman, Sachs & Co.

APPLICANTS: The Benchmark Funds, The Commerce Funds (collectively, the ''Funds''), and Goldman, Sachs & Co. (''Goldman Sachs'').

FILING DATES: The application was filed on March 19, 1996 and amended on October 15, 1996, and September 18, 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 December 8, 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. The Benchmark Funds, 4900 Sears Tower, Chicago, Illinois 60606–6303, The Commerce Funds, PO Box 16391, St. Louis, Missouri 63105, Goldman, Sachs & Co., 85 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Mary Kay Frech, Branch Chief at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Benchmark Funds is a Massachusetts business trust that is registered under the Act as an open-end management investment company. The Benchmark Funds currently offers to institutional investors 17 equity, fixed income and money market Portfolios.[1] The Benchmark Funds is the proprietary fund of the Northern Trust Company (''Northern''), which serves as investment adviser, transfer agent and custodian for each of the Benchmark Funds' Portfolios. Northern, a member of the Federal Reserve System, is an Illinois state-chartered commercial bank and the principal subsidiary of Northern Trust Corporation, a bank holding company.

2. The Commerce Funds is a Delaware business trust that is registered under the Act of an open-end management investment company. The Commerce Funds currently consists of nine Portfolios, which are offered to both individual and institutional investors. The Commerce Funds is the proprietary fund of the Commerce Bank, N.A. (St. Louis) and Commerce Bank, N.A. (Kansas City), which serve as the investment advisers to the Commerce Funds. Each of these banks is a subsidiary of Commerce Bancshares, Inc., a registered multi-bank holding company (collectively, ''Commerce Bank'' and together with Northern, the ''Banks'').

3. At present, federal banking laws and regulations are interpreted to restrict the ability of banks and bank holding companies, directly or through affiliated persons, to act as distributors for mutual funds or to provide personnel to act as officers and employees of the funds. Consistent with these requirements, bank proprietary funds must find a third party, independent of the bank, to act as the nominal ''distributor,'' and retain officers who are not affiliated with the bank to perform certain administrative functions not associated with the selection of investments or broker-dealers through which trades may be effected.

4. Goldman Sachs is a registered broker-dealer that was founded in 1869.

[1] As used in this release, the term ''Portfolio'' refers to any series of a registered open-end management investment company relying on any order granting the application or, if the company relying on any such order has a single investment portfolio, the company itself.

It is one of the oldest and largest international investment banking and brokerage firms, with offices in New York and other financial capitals of the world.

5. Goldman Sachs has acted as principal underwriter/distributor and administrator for the Funds since their inception. The primary consideration for using Goldman Sachs is its capacity as an administrator. Goldman Sachs is entitled to a fee from each Portfolio of the Funds for its administrative services, but generally receives no fee for its distribution activities.[2]

6. It its capacity as administrator, Goldman Sachs supplies each Fund with administrative officers, including an employee who serves as president of one of the Funds, who are responsible for performing administrative functions on behalf of the Funds. These officers are also officers and/or employees of Goldman Sachs. No administrative officer of a Fund who is an affiliated person of Goldman Sachs serves as a director of the Fund, sets fund policies, or currently is affiliated with any investment adviser to any Portfolio of a Fund. Such administrative officers have no involvement in, or influence over, the selection of any investment for the Fund or any broker or dealer through whom transactions may be effected.

7. The Funds rely upon Goldman Sachs to perform the distribution tasks that the federal banking regulators presently may restrict them from undertaking. These tasks include: Entering into distribution agreements with the Funds; being named as the distributor in Fund prospectuses and sales literature; at the direction of the Banks, entering into agreements with broker-dealers selling the Funds; acting as broker of record for unsolicited direct sales of shares of the Funds; paying the costs of printing and distributing the Funds' prospectuses to potential investors; providing sales compliance training; consulting with the Funds' investment advisers about new market and product opportunities; and monitoring advertising and sales literature compliance. Goldman Sachs does not solicit any trades or provide any telemarketing services, and has no sales personnel dedicated to the Funds. Shares of each Fund are made available through a bank or its affiliated persons to their customers, or through other intermediaries that are not affiliated with Goldman Sachs. If investors are permitted to purchase shares by contacting the Funds' distributor, Goldman Sachs acts as the broker of record for unsolicited trades, and takes phone orders and redemption requests. Goldman Sachs does not locate customers for the Funds, does not instruct its clients to purchase shares from the Funds, and does not accompany Fund salespersons in meetings with potential investors.

8. Applicants request an order under sections 6(c), 10(f), and 17(b) of the Act that would exempt applicants from sections 10(f) and 17(a). The order would permit principal transactions in the ordinary course of business between any Portfolio and Goldman Sachs or any entity controlled by, controlling, or under common control with Goldman Sachs. Applicants request that the order also apply to any registered open-end management investment company (i) for which officers or employees of Goldman Sachs in the future act as officers as described in the application, or (ii) for which Goldman Sachs in the future provides distribution services as described in the application.

Applicants' Legal Analysis

1. Sections 17(a) of the Act generally prohibits any affiliated person or principal underwriter for a registered investment company, or any affiliated person of such affiliated person or principal underwriter (a ''second-tier affiliate''), acting as principal, from knowingly selling any security or other property to such registered investment company and from knowingly purchasing any security or other property from the registered investment company. Goldman Sachs may not knowingly engage in principal transactions with a Fund absent an exemptive order, because Goldman Sachs is the principal underwriter for the Funds.

2. Section 17(b) of the Act authorizes the SEC to issue an order of exemption from one or more of the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if 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 request an exemption under sections 6(c) and 17(b) to allow the above transactions.[3]

4. Applicants state that Congress enacted section 17(a) of the Act to address the problems associated with transactions of affiliated persons and underwriters or distributors that are able to control or influence the investment decisions of investment companies. Applicants assert that the prohibitions of section 17(a) were applied to distributors of investment company shares because, at the time of the enactment of the Act, distributors possessed enormous control over investment companies.

5. Applicants argue that the prohibitions of section 17(a) apply to distributors of the shares of open-end investment companies in recognition of the extent of control and influence a distributor in many circumstances is in a position to assert over an open-end investment company. Applicants note that when a distributor serves as the focal point for the purchase and sale of shares of an open-end investment company, an investment company may be pressured to enter into arrangements with the distributor that may not be benefical to the company in order to assure the continued sale of the company's securities. Applicants also note that the provisions of section 17(a) relating to distributors of shares of open-end companies reflect a recognition that an open-end company's distributor is often affiliated with the company's investment adviser.

6. Applicants contend that Goldman Sachs' role as distributor of the Funds does not raise the types of problems that section 17(a) is designed to address. Applicants argue that the Funds are not captives of Goldman Sachs as a matter of either contract of *de facto* influence. Applicants state that Goldman Sachs has been chosen as the Funds' distributor primarily because federal banking laws and regulations have been interpreted to prohibit the Banks from

[2] The Commerce Funds is forming a class of shares that is expected to bear a distribution fee pursuant to rule 12b–1 under the Act at a rate of 0.25% of the class' net asset value. Although Goldman Sachs would be the initial recipient of the fee because it is the Funds' distributor, the fee is expected to be used primarily to make ''trail commission'' or shareholder service payments to third parties. If unsolicited trades are effected for which Goldman Sachs is broker of record, Goldman Sachs may retain the trail commissions attributable to those trades to help defray the cost of Fund advertisements and other distribution expenses. In the future, the Funds may create classes of shares that bear different distribution fees or may change the distribution fees attributable to their existing classes.

[3] Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. Keystone Custodian Funds, 21 S.E.C. 295, 298–99 (1945). Section 6(c), along with section 17(b), frequently is used to grant relief from section 17(a) to permit an ongoing series of future transactions.

distributing Fund shares. Applicants note that although banks are permitted to engage in most distribution activities, interpretations of the federal banking regulations prevent full participation by banks in the underwriting process.[4] Applicants assert that the Banks retain the services of an entity such as Goldman Sachs to provide administrative and nominal distribution services consistent with these interpretations.[5]

7. Applicants assert that Goldman Sachs does not serve as the focal point for the purchase and sale of Fund shares. Applicants state that Goldman Sachs plays no role in promoting the Funds to retail or institutional customers. Sales of investment company shares are instead conducted by each of the respective Banks and/or bank holding company organizations with which the Funds are affiliated and have advisory relationships or broker-dealers identified by those Banks. Applicants state that all sales of the Funds since inception have resulted from the institutional and retail relationships of the Banks. Applicants emphasize that it is these institutions, and not Goldman Sachs, that provide the organizational structures that actively promote the Funds. Applicants state that if Goldman Sachs was replaced as principal underwriter, the Banks and broker-dealers would merely enter into agreements with a new underwriter, because the broker-dealers' substantive relationship is with the Banks and/or bank holding company organizations with which the Funds are affiliated and not with Goldman Sachs.

8. Applicants state that investment decisions for each of the Portfolios are made exclusively by the Banks or other investment advisers that are not affiliated with Goldman Sachs. Applicants assert that it has always been the intent of the Banks and their parent banks and/or bank holding companies to retain control over the investment decisions of the Funds which they advise, except to the extent that third parties are to act as investment advisers or sub-advisers to the Portfolios. Applicants also state that although not presently intended, Goldman Sachs could become a sub-adviser or adviser to a Portfolio of a Fund in the future. If Goldman Sachs became a sub-adviser or adviser to any Portfolio, it would engage in principal transactions in reliance on any order granting the application only with Portfolios advised by parties other than Goldman Sachs or its affiliated persons, and would do so only in conformity with applicable exemptive orders[6] or no-action letters.[7] Applicants assert that the section 17(a) concern regarding affiliated distributors would not arise in applicants' case because in no instance will Goldman Sachs engage in principal transactions with portfolios for which it acts as adviser or sub-adviser except as permitted under condition 1.

9. Applicants state that although Goldman Sachs' officers or employees serve as officers of the Funds, none of such persons are responsible for the formulation or establishment of the Portfolios' investment objectives, policies or restrictions. The officers and employees function only as administrative officers of the Funds, handling administrative tasks necessary to maintain the Funds as going concerns. Applicants contend that the performance of these functions by Goldman Sachs' personnel does not result in any opportunity for control of the Funds. The policy-making functions of each Fund rest with its respective independent board of directors, which have been and will continue to be responsible for the selection and review of the major contractors to the Funds, including the advisers and the distributor. Goldman Sachs' officers and employees do not and will not serve as members of the Funds' boards of directors and, consequently, will not be engaged in considering and approving the Funds' advisory and distribution arrangements.

10. Applicants contend that since the proposed principal transactions would not implicate the principal concerns reflected in section 17(a), the inability of the Portfolios to engage in these transactions with a major financial institution imposes opportunity and execution costs on the investment company. Applicants contend that the prohibitions of section 17(a) and the resulting costs to the Portfolios are neither required nor appropriate because an independent third party, with a vested interest in each Portfolio's performance, is making all investment decisions for the Portfolio and the Funds are in no way dependent on the distribution services of Goldman Sachs.

11. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring any security, during its underwriting or syndication, the principal underwriter of which is a person who is an officer or employee of the investment company or is a person affiliated with an officer or employee of the investment company. Section 10(f) authorizes the SEC to exempt any transactions or classes of transactions from the prohibitions of section 10(f) if the exemption is consistent with the protection of investors.

12. Under section 10(f), the Portfolios are restricted from acquiring securities from Goldman Sachs during the securities' underwriting or syndication period when Goldman Sachs serves as underwriter of the securities. Applicants note that the only reason that section 10(f) applies is because officers and employees of Goldman Sachs serve as officers of the Funds. Applicants argue that the reason for applying this prohibition to officers of the Funds—the control and influence that an officer may have over the investment decisions of a Portfolio—does not apply for the same reasons described above in connection with section 17(a). Applicants contend that the Portfolios presently are deprived of full access to the many securities (especially in the fixed-income arena) of which Goldman Sachs is an underwriter. Applicants assert that the terms and conditions set forth in the proposed relief are reasonable and fair and do not involve overreaching on the part of any person; they are consistent with the general purposes of the Act, in general, and sections 17(a) and 10(f), in particular, and the requested exemption is 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' Conditions

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

1. Neither Goldman Sachs nor its affiliated persons will engage in principal transactions with a Portfolio for which Goldman Sachs or any of its affiliated persons act as investment

[4] Applicants cite OCC Interpretive Letter No. 648 (May 4, 1994) and Melanie L. Fein, *Securities Activities of Banks* § 9.07 (1995).

[5] Although Goldman represents that it provides nominal distribution services to the Funds, Goldman acknowledges that it continues to retain responsibility as principal underwriter for all purposes under the federal securities laws.

[6] *See North American Security Trust*, Investment Company Act Release Nos. 18860 (July 22, 1992) (notice) and 18899 (Aug. 18, 1992) (order); *The One Group*, Investment Company Act Release Nos. 19410 (Apr. 15, 1993) (notice) and 19470 (May 11, 1993) (order) (the ''*Sub-Adviser Orders*''). Under these orders, Goldman Sachs is permitted to engage in principal transactions with portfolios of any registered investment company of which Goldman Sachs may be deemed to be an affiliated person of an affiliated person solely because of its sub-advisory relationship with other portfolios of that investment company. Goldman Sachs intends to reply on these orders in conjunction with the exemptive order requested by this application.

[7] *Salomon Brothers Inc.*, SEC No-Act. Letter (pub. avail. May 26, 1995).

adviser except to the extent permitted by the Act, the rules under the Act, no-action letter, or any exemptive order granted after the date of an order granting this application, provided that the application requesting the subsequent order refers specifically to this application.

2. Goldman Sachs and its affiliated persons will engage in principal transactions with a Portfolio in reliance on any order granting this application only if (i) Goldman Sachs is not affiliated with any investment adviser to the Portfolio, (ii) neither Goldman Sachs nor any affiliated person of Goldman Sachs is responsible for the selection of particular securities to be acquired for the Portfolio, and (iii) neither Goldman Sachs nor any affiliated person of Goldman Sachs is responsible for the selection of any particular broker-dealer or other counterparty for transactions effected by the Portfolio.

3. Goldman Sachs and its affiliated persons will engage in principal transactions with a Portfolio in reliance on any order granting this application only if no affiliated person of Goldman Sachs is serving as a director of the Fund of which the Portfolio is a part.

4. Transactions between Goldman Sachs or its affiliated persons and any Portfolio made in reliance on any order granting this application will be effected only pursuant to arm's length negotiations with the Portfolio, acting through its investment adviser or other person unaffiliated with Goldman Sachs, and will be consistent with the policy of the Portfolio.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30179 Filed 11–17–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26777]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

November 10, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 4, 1997, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

GPU, Inc. and GPU International, Inc. (70–7727)

GPU, Inc. ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and GPU International, Inc. ("GPU International"), One Upper Pond Road, Parsippany, New Jersey 07054, a nonutility subsidiary of GPU, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45, 53 and 54 under the Act to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and rules 45, 50, 51, 90 and 91 under the Act.

By orders dated November 16, 1995, June 14, 1995, December 28, 1994, September 12, 1994, December 18, 1992, and June 26, 1990 (HCAR Nos. 26409, 26307, 26205, 26123, 25715, and 25108) ("Prior Orders"), GPU International [1] was authorized to engage in preliminary project development and administrative activities ("Project Activities") for its investments in: (i) Qualifying facilities ("QFs"), as defined in the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"); (ii) exempt wholesale generators ("EWGs"), as defined in section 32 of the Act; and (iii) foreign utility companies ("FUCOs"), as defined in section 33 of the Act.

The Prior Orders also authorized GPU from time to time through December 31, 1997 to: (i) Enter into guarantees, support instruments, and bank letters of credit reimbursement agreements or similar financial instruments or undertakings ("Guarantees") to secure GPU International's agreement with any person (including without limitation project lenders) in connection with GPU International's Project Activities and the acquisition of ownership or participation interests in QF, EWG, or FUCO projects; (ii) guarantee the securities or other obligations of EWGs and FUCOs; and (iii) assume liabilities of EWGs and FUCOs, in an amount of up to $500 million. The Prior Orders also authorized GPU International to enter into guarantees, and to assume liabilities of EWGs and FUCOs, in an aggregate amount of up to $50 million from time to time through December 31, 1997.

GPU and GPU International ("Applicants") propose to: (i) Expand the purposes for which GPU may enter into Guarantees on behalf of GPU International to include Guarantees of any security or other obligation of GPU International or a subsidiary of GPU International ("GPUI Subsidiary"), provided the issuance and sale of any such security is exempt from the requirement of prior Commission approval under section 6(a) of the Act or has been otherwise authorized by the Commission; (ii) to increase to $150 million the aggregate principal amount of Guarantees which GPU International may have outstanding hereunder and to expand the purposes for which GPU International may enter into Guarantees to include guarantees of the securities or other obligations of GPUI Subsidiaries, provided the issuance and sale of any such security is exempt from the requirement of prior Commission approval under section 6(a) of the Act or has been otherwise authorized by the Commission; (iii) to extend until December 31, 2000 the period during which Applicants may enter into Guarantees; and (iv) to permit any GPUI Subsidiary which is not an EWG or FUCO to guarantee the securities or other obligations of their direct or indirect subsidiaries from time to time through December 31, 2000 in an aggregate amount not to exceed, together with the aggregate amount of GPU International Guarantees outstanding, $150 million, provided the issue and sale of any such security is exempt from the requirement of prior Commission approval under section 6(a) of the Act or has been otherwise authorized by the Commission.

The term of each Guarantee and any letter of credit ("L/C") reimbursement agreement, would not exceed 35 years. L/C fees would not exceed 1% annually of the face amount of the L/C. Drawings under each L/C would bear interest at not more than 5% above the prime rate

[1] The Prior Orders were issued for Energy Initiatives, Inc. ("EII"). GPU International is the entity which succeeded EII.