

Commission Review of LBP-97-20  
Location: ACRS Conference Room—  
Tentative)  
(Two White Flint North, Room T2B3)

\*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Bill Hill (301) 415-1661.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [wmh@nrc.gov](mailto:wmh@nrc.gov) or [dkw@nrc.gov](mailto:dkw@nrc.gov).

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Dated: July 14, 1998.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 98-19214 Filed 7-15-98; 11:39 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 23312; 812-10824]

### CypressTree Asset Management Corporation, Inc., North American Floating Income Fund, Inc., CypressTree Investment Management Company, Inc., and CypressTree Funds Distributors, Inc.; Notice of Application

July 10, 1998.

**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 Section 6(c) granting an exemption from Sections 18(c) and 18(i) of the Act and rule 23c-3 under the Act, and under Section 17(d) of the Act and rule 17d-1 under the Act, to permit certain registered closed-end investment companies to issue multiple classes of shares, impose distribution and service fees, and early withdrawal charges. Applicants also request an amendment to a prior order.

**APPLICANTS:** CypressTree Asset Management Corporation, Inc. ("CAM"), North American Senior Floating Rate Fund, Inc. (the "Fund"), and CypressTree Investment Management Company ("CypressTree"), and CypressTree Funds Distributors, Inc. ("Distributors").

**FILING DATES:** The application was filed on October 22, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**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 request should be received by the SEC by 5:30 p.m. on August 4, 1998, 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 of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: 125 High Street, Boston, Massachusetts 02110.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Staff Attorney, at (202) 942-0574, or Edward P. Macdonald, 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 is available for a few at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

### Applicant's Representations

1. The Fund is a closed end management investment company registered under the Act and organized as a Maryland corporation. CAM, an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), will serve as investment adviser to the Fund. CAM will enter into a sub-advisory agreement with CypressTree, an investment adviser registered under the Advisers Act, pursuant to which CypressTree will select the investments made by the Fund. Distributors, a broker-dealer registered under the Securities

Exchange Act of 1934 (the "Exchange Act"), will distribute the Fund's shares. Applicants request that the order also apply to any other registered closed-end management investment company for which CAM or CypressTree or any entity controlling, controlled by, or under control with CAM or CypressTree acts as investment adviser, sub-investment adviser, principal underwriter, or administrator.<sup>1</sup>

2. The Fund's investment objective will be to provide as high a level of current income as is consistent with the preservation of capital. The Fund will invest primarily in senior secured floating rate loans made by commercial banks, investment banks, and finance companies to commercial and industrial borrowers ("Loans"). Under normal market conditions, the Fund will invest at least 80% of its total assets in Loans. Up to 20 percent of the Funds's total assets may be held in cash, invested in investment grade short-term and medium-term debt obligations, or invested in unsecured senior floating rate loans determined by CypressTree to have a credit quality at least equal to the loans.

3. The Fund will continuously offer its shares to the public at net asset value (plus a sales load in certain cases as discussed below). Applicants were granted an order permitting the Fund and certain other registered closed-end investment companies to make monthly repurchase offers in reliance on rule 23c-3 under the Act ("Prior Order").<sup>2</sup>

4. The Fund expects to offer three classes of shares. Class A Shares may be subject to a front-end sales charge. Class B Shares and Class C Shares will be offered without a front-end sales charge, but Shares accepted for repurchase that have been held for less than a certain period of time will be subject to early withdrawal charges ("EWCs") payable to Distributors.<sup>3</sup> After ten years, Class B Shares will automatically convert to

<sup>1</sup> Any such investment company relying on this relief will do so in a manner consistent with the terms and conditions of this application. Applicants represent that each investment company presently intending to rely on the relief requested in this application is listed as an applicant.

<sup>2</sup> *CypressTree Asset Management Corporation et al.*, Investment Company Act Release Nos. 23020 (February 4, 1998) and 23055 (March 3, 1998) (order). Applicants request to amend the Prior Order to extend the relief granted in the Prior Order to any other registered closed-end investment company for which CAM or CypressTree or any entity controlling, controlled by or under common control with CAM or CypressTree acts as administrator or sub-investment adviser.

<sup>3</sup> Class B Shares will be subject to EWCs that decline over time to 0% after the end of the fourth year that a shareholder owns Class B Shares. Class C Shares will be subject to early withdrawal charges of 1% during the first year that a shareholder owns Class C Shares.

Class A Shares, and after eight years, Class C Shares will automatically convert to Class A Shares. Class A, Class B, and Class C Shares will be subject to an annual service fee of up to .25% of net assets. Class B and Class C Shares also will be subject to an annual distribution fee of up to .50% of net assets. Applicants represent that all of these fees will comply with the requirements of Rule 2830(d) of the NASD Conduct Rules as if the Fund were an open-end investment company. Applicants also represent that the Fund intends to disclose in its prospectus the fees, expenses, and other characteristics of each class of shares offered for sale, as is required for open-end multi-class funds under Form N1-A.

5. All expenses incurred by the Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class. Distribution fees, service fees, and incremental expenses that may be attributable to a particular class of shares, including transfer agent fees, printing and postage expenses, state and federal registration fees, administrative fees, legal fees, will be charged directly to the net assets of a particular class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. The Fund may create additional classes of shares in the future that may have different terms from Class B, Class C, and Class A Shares.

6. The Fund may waive the EWCs for certain categories of shareholders or transactions to be established in the future. With respect to any waiver of, scheduled variation in, or elimination of the EWC, the Fund will comply with rule 22d-1 under the Act as if the Fund were an open-end investment company.

7. The Fund may offer its shareholders an exchange feature under which shareholders of the Fund may exchange their shares for shares of the same class of other funds in the North American Group of investment companies. Any exchange option will comply with rule 11a-3 under the Act as if the Fund were an open-end investment company subject to that rule. In complying with rule 11a-3, the Fund will treat the EWCs imposed on Class B Shares and Class C Shares as if they were contingent deferred sales charges ("CDSCs").

#### Applicants' Legal Analysis

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security.

Applicants state that the creation of multiple classes of shares of the Fund may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management company shall be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Fund may violate section 18(i) because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Rule 23c-3(b)(1) under the Act 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 state that the imposition of an EWC on shares tendered for repurchase that have been held for less than a specified period may violate rule 23c-3(b)(1).

4. Section 6(c) of the Act 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 the policy and provisions of the Act.

5. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act and rule 23c-3(b)(1) to permit multiple classes of shares of the Fund and the imposition of EWCs.

6. Applicants believe that the proposed allocation of expenses and voting rights among multiple classes is equitable and would not discriminate against any group of Fund shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that their proposal does not raise the concerns underlying section 18 to any greater degree than open-end investment companies' multiple class systems that are permitted by rule 18f-3 under the Act. Applicants state that the Fund will comply with rule 18f-3 as if it were an open-end fund.

7. Applicants further state that EWCs are functionally similar to CDSCs that open-end investment companies may charge under rule 6c-10 under the Act. Applicants believe that EWCs may be necessary for Distributors to recover distribution costs and that EWCs may discourage shareholders from engaging

in frequent trading, a practice that applicants believe imposes costs on other shareholders. Applicants will comply with rule 6c-10 under the Act as if the Fund were an open-end investment company.

8. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the SEC issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the SEC considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act, and to the extent to which the participation is on basis different from or less advantageous than that of other participants.

9. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end funds to enter into distribution arrangements pursuant to rule 12b-1. Applicants also request an order under section 17(d) and rule 17d-1 to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rule 12b-1 as if the Fund were an open-end investment company.

#### Applicants' Condition

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

1. Applicants will comply with rules 18f-3, 12b-1, 6c-10, and 22d-1 under the Act and NASD Conduct Rule 2830(d), as amended from time to time, as if those rules apply to closed-end investment companies.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-19049 Filed 7-16-98; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23311; 812-9982]

#### Morgan Stanley & Co. Incorporated; Notice of Application

July 10, 1998.

**AGENCY:** Securities and Exchange Commission ("Commission" or "SEC").