

Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23391; 812-10842]

### Diversified Investors Portfolios, et al.; Notice of Application

August 17, 1998.

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

**ACTION:** Notice of Application for an order under the Investment Company Act of 1940 (the "Act").

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) of the act from the provisions of section 15(a) of the Act and rule 18f-2 under the Act.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit them to enter into and materially amend contracts with subadvisers without shareholder approval.

**APPLICANTS:** Diversified Investors Portfolios ("DIP") and Diversified Investment Advisors, Inc. (the "Manager").

**FILING DATE:** The application was filed on October 28, 1997, and amended on April 20, 1998. 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 Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 8, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers' request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 4 Manhattanville Road, Purchase, New York 10577, Attention: Robert F. Colby.

**FOR FURTHER INFORMATION CONTACT:**

Lawrence W. Pisto, Senior Counsel, at (202) 942-0527, or Nadya B. Roytblat, Assistant Director, 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, N.W., Washington, D.C. 20549 (tel. (202) 942-8090).

### Applicants' Representations

1. DIP is organized as a New York trust and is registered under the Act as an open-end management investment company. DIP currently consists of thirteen portfolios (the "Core Portfolios"). Beneficial interests in the Core Portfolios are issued solely in private placement transactions that do not involve any "public offering" within the meaning of Section 4(2) of the Securities Act of 1933 (the "Securities Act"). Investments in the Core Portfolios may only be made by investment companies, insurance company separate accounts (including accounts registered under the Act and accounts not so registered), common or commingled trust funds or similar organizations or entities that are "accredited investors" within the meaning of Regulation D under the Securities Act. Each Core Portfolio serves as a master fund in a master/feeder structure. Each registered investment company (or series thereof) which invests its investable assets in a Core Portfolio is referred to as a feeder fund ("Feeder Fund").

2. DIP has entered into investment management agreements with the Manager with respect to each of the Core Portfolios (each a "Management Agreement"). The Manager is registered under the Investment Advisers Act of 1940 (the "Advisers Act"). Under the terms of the Management Agreements, the Manager supervises the overall administration of the Core Portfolios, providing or overseeing the provision of all business, administrative, investment advisory and, if applicable, portfolio management services. For its services, the Manager receives a management fee at an annual rate based on a percentage of the applicable Core Portfolio's average net assets.

3. The Manager seeks to enhance performance of the Core Portfolios and reduce risk by selecting one or more "specialist" subadvisers ("Subadvisers"). The Manager selects Subadvisers based on a rigorous process which includes researching each Subadviser's asset class, track record, organizational structure, management

team, consistency of performance, assets under management, and other factors. The Manager continuously monitors a Subadviser's performance on both a quantitative and qualitative basis.

4. The specific investment decisions for each Core Portfolio are made by one or more Subadvisers, each of which has discretionary authority to invest all or a portion of the assets of the particular Core Portfolio, subject to general supervision by the Manager and DIP's Board of Trustees ("Board"). Each Subadviser is or will be registered under the Advisers Act.<sup>1</sup> Each of the Subadvisers receives a subadvisory fee from the Manager at an annual rate based on a percentage of the applicable Core Portfolio's average net assets. Of the thirteen Core Portfolios, eleven currently have one Subadviser, one has two Subadvisers, and one has four Subadvisers.

5. Applicants request an order that would permit the Manager, subject to the oversight by the Board, to enter into and materially amend agreements with Subadvisers ("Subadvisory Agreements") without shareholder approval. Applicants believe that this relief would enable the Core Portfolios to operate more efficiently and consistently with the Manager-Subadviser structure.

### Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f-2 provides that each series or class of stock in a series company must approve the matter if the Act requires shareholder approval.<sup>2</sup>

2. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction from any provision of the Act 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.

<sup>1</sup> Each Subadviser will be registered under the Advisers Act unless it is a "bank" as defined in the advisers Act or is otherwise excluded from the definition of "investment adviser" under section 202(a)(11) of the Advisers Act.

<sup>2</sup> In the case of the Core Portfolios, which are "master" funds in a master/feeder structure, shareholder approval requirements under section 15(a) and rule 18f-2 also are governed by the voting provisions set forth in section 1 12(d)(1)(E) of the Act.

3. Applicants request an order under section 6(c) that would exempt them from section 15(a) and rule 18f-2 to permit the Manager, subject to approval by the Board, to enter into and materially amend Subadvisory Agreements without shareholder approval. Applicants request that the relief extend to the existing Core Portfolios as well as future series of DIP and any other registered open-end management investment company advised by the Manager or a person controlling, controlled by, or under common control with the Manager that operates in substantially the same manner as DIP with respect to the Manager-Subadviser structure and complies with the terms and conditions of the application ("Future Fund").

4. Applicants state that, from the perspective of the investor in a Core Portfolio or Feeder Fund, the role of the Subadviser is comparable to that of the individual portfolio managers employed by other investment advisory firms. The Subadvisers are concerned only with selection of portfolio investments in accordance with a Core Portfolio's investment objective and policies and have no broader supervisory, management or administrative responsibilities with respect to the Core Portfolio. Applicants state that the Core Portfolios thus offer the Manager/Subadviser structure to allow investors the opportunity to invest their assets in a selection of investment disciplines managed by their respective Subadvisers. The Manager, based on its own analyses and experience, determines which Subadvisers are likely to make specific portfolio securities selections which, in the aggregate, will achieve the desired and defined objectives of a particular investment discipline under existing market conditions. Investors also obtain the Manager's constant supervision of these Subadvisers, so that new Subadvisers can be introduced in response to changing market conditions or a Subadviser's performance, in each case in an attempt to improve the overall performance of the Core Portfolios.

5. Applicants believe that investors in a Feeder Fund or Core Portfolio are, in effect, electing to have the Manager select one or more Subadvisers best suited to achieve that Core Portfolio's investment objective. Part of such investor's investment decision is a decision to have those selections made by a professional management organization, such as the Manager, with substantial experience in making such evaluations and selections (or in recommending the termination of Subadvisers, as deemed appropriate by

the Manager). Applicants thus believe that the requested relief will allow the Core Portfolio to operate more efficiently and in accordance with investor expectations. Applicants also note that the Management Agreement will remain subject to the shareholder voting requirements of section 15(a).

#### **Applicants' Conditions**

1. Before a Core Portfolio may rely on the order requested in the application, the operation of the Core Portfolio in the manner described in the application will be approved by a majority of the outstanding voting securities of the Core Portfolio, within the meaning of the Act, pursuant to voting instructions provided by shareholders of those Feeder Funds investing in such Core Portfolio (or by the unit holders in the case of Feeder Funds that are insurance company separate accounts) that are registered under the Act or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, if applicable. Before a Future Fund may rely on the order requested in the application, the operation of the Future Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Future Fund, within the meaning of the Act, pursuant to voting instructions provided by the shareholders of the Future Fund (or by unit holders in the case of a Future Fund that is an insurance company separate account registered under the Act), in accordance with section 12(d)(1)(E)(iii)(aa) of the Act, or in the case of a Future Fund whose shareholders or unit holders, as the case may be, purchase shares in a public offering on the basis of a prospectus containing the disclosure contemplated by Condition 2 below, by the initial shareholder(s) before the shares of the Future Fund are offered to the public.

2. A Feeder Fund's prospectus, DIP's or Future Fund's offering documents and, if applicable, DIP's or Future Fund's prospectus, will disclose the existence, substance and effect of any order granted pursuant to this application. In addition, the Feeder Funds, the Core Portfolios and Future Funds will hold themselves out as employing the Manager/Subadviser approach described in the application. A Feeder Fund's prospectus, DIP's or Future Fund's offering documents and, if applicable, DIP's or Future Fund's prospectus, will prominently disclose that the Manager has ultimate responsibility to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Manager will provide management and administrative services to the Core Portfolios and, subject to the review and approval by the Board, will, as necessary: set each Core Portfolio's overall investment strategies; select Subadvisers; allocate and reallocate, as appropriate, each Core Portfolio's assets among Subadvisers; monitor and evaluate Subadviser performance; and oversee Subadviser compliance with the investment objective, policies and restrictions of the applicable Core Portfolio.

4. At all times, a majority of the Board will be persons who are not "interested persons" of DIP, within the meaning of section 2(a)(19) of the Act (the "Independent Trustees"), and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

5. Neither the Manager nor a Core Portfolio will enter into a Subadvisory Agreement with any subadviser that is an affiliated person of DIP or the Manager, within the meaning of section 2(a)(3) of the Act (each an "Affiliated Subadviser"), other than by reason of serving as Subadviser to one or more Core Portfolios, without such Subadvisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Core Portfolio pursuant to voting instructions provided by shareholders of those Feeder Funds investing in such Core Portfolios (or by unit holders in the case of Feeder Funds that are insurance company separate accounts) that are registered under the Act or other voting arrangements that comply with 12(d)(1)(E)(iii)(aa) of the Act, if applicable.

6. When a Subadviser change is proposed for a Core Portfolio with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of the meetings of the Board that such change is in the best interests of the applicable Core Portfolio and its investors (including, in the case of a Core Portfolio offered to insurance company separate accounts, the unit holders of any separate account for which that Core Portfolio serves as a funding medium) and does not involve a conflict of interest from which the Manager or the Affiliated Subadviser derives an inappropriate advantage.

7. No director, trustee or officer of DIP or the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by the director, trustee or officer) any interest in a Subadviser except for ownership of (i) interests in the Manager

or any entity that controls, is controlled by, or is under common control with the Manager; or (ii) less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

8. Within 75 days of the hiring of any new Subadviser, the Manager will furnish the shareholders of the applicable Core Portfolio and Feeder Funds (including in the case of a Feeder Fund that is an insurance company separate account, the unit holders of that separate account) all the information that would have been included in a proxy statement. Such information will include any changes in such information caused by the addition of a new Subadviser. To meet this obligation, the Manager will provide the shareholders of the applicable Core Portfolios and Feeder Funds (including in the case of a Feeder Fund that is an insurance company separate account, the unit holders of that separate account) with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (the "Exchange Act"), as well as the requirements of Item 22 of Schedule 14A under the Exchange Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26906]

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

August 14, 1998.

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 under the Act. 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 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 September 8, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 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 should 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 September 8, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### System Energy Resources, Inc. (70-8511)

Entergy Corporation ("Entergy"), P.O. Box 61005, New Orleans, Louisiana 70161, a registered holding company, Entergy's electric generating subsidiary company, System Energy Resources, Inc. ("SERI"), 1340 Echelon Parkway, Jackson, Mississippi 39213; and Entergy's operating subsidiary companies ("Operating Subsidiaries"), Entergy Arkansas, Inc., P.O. Box 551, Little Rock, Arkansas 72203; Entergy Louisiana, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113; Entergy Mississippi, Inc., P.O. Box 1640, Jackson, Mississippi 39205; and Entergy New Orleans, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Act and rules 44, 45 and 54 thereunder.

By orders dated May 9, 1995 (HCAR No. 26287), August 18, 1995 (HCAR No. 26358) and August 27, 1996 (HCAR No. 26561) ("Orders"), the Commission authorized SERI, through December 31, 2000, to issue and sell one or more series of its first mortgage bonds ("Bonds") and one or more series of its debentures ("Debentures") in an aggregate principal amount not to exceed \$540 million. The Orders also authorized SERI to enter into arrangements for the issuance and sale of tax-exempt revenue bonds ("Tax-Exempt Bonds") in an aggregate principal amount not to exceed \$350 million. In support of the Tax-Exempt Bonds, SERI was authorized to issue and pledge one or more new series of its first mortgage bonds in an aggregate principal amount not to exceed \$395 million or obtain one or more

irrevocable letters of credit with face amounts of up to \$395 million.

In order to provide additional security for its obligations under the Bonds, SERI was authorized to assign to holders of the Bonds certain rights under an agreement with the Operating Subsidiaries to receive operating expense payments from those subsidiaries for the operation of a nuclear powered generating station. SERI was authorized also to assign to holders of the Bonds certain rights under a separate agreement to receive capital contributions from Entergy in amounts sufficient to maintain SERI's equity ratio at a 35% level, as defined in that agreement.

SERI now proposes to increase the aggregate outstanding principal amounts of Bonds and/or Debentures from \$540 million to \$685 million. In addition, SERI proposes to increase the obligations incurred ("Notes") in connection with the issuance and sale of Tax-Exempt Bonds from \$350 million to \$515 million. As authorized in the Orders, the Bonds, Debentures and Notes will have maturities not exceeding 40 years. All other terms and conditions authorized in the Orders will also remain the same.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-22433 Filed 8-19-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### Midland, Inc.; Order of Suspension of Trading

August 18, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Midland, Inc. ("Midland") because of questions regarding the accuracy and adequacy of information disseminated by and about Midland concerning, among other things: Midland's assets and liabilities; the identity and assets of the companies that Midland has announced plans to acquire; Midland's current operations and business prospects; the composition and involvement in company affairs of Midland's purported management; and the possible misappropriation of assets by Midland officers, and because Midland has failed to file with the Commission a Form 10-KSB for the year