

**RAILROAD RETIREMENT BOARD****Appointment to the Senior Executive Service Performance Review Board****AGENCY:** Railroad Retirement Board.**ACTION:** Notice.

**SUMMARY:** The Railroad Retirement Board (Board) is announcing the membership on its Senior Executive Service Performance Review Board.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Leonard S. Harris, Bureau of Personnel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751-4323.

**SUPPLEMENTARY INFORMATION:** Agencies are required to publish notices of appointments to their Senior Executive Service Performance Review Boards (5 U.S.C. 4314 (c)(4) and 5 CFR 430.307(b)).

The members of the Railroad Retirement Board's Performance Review Board are:

**Chairman**

Robert J. Duda—Director of Operations

**Members**

John L. Thoresdale—Director of Policy and Systems

Frank J. Buzzi—Chief Actuary

Steven A. Bartholow—Deputy General Counsel

Rachel L. Simmons—Attorney-Advisor/Assistant to Chair

James C. Boehner—Assistant to the Labor Member

Joseph M. Waechter—Assistant to the Management Member.

Dated: November 2, 1998.

By authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 98-30426 Filed 11-12-98; 8:45 am]

BILLING CODE 7905-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 23527; 812-11346]

**Fundamental Funds, Inc., et al.; Notice of Application**

November 6, 1998.

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

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act.

**SUMMARY OF THE APPLICATION:** The requested order would permit the implementation, without prior shareholder approval, of new investment advisory agreements ("Interim Agreements") for a period beginning on the date the requested order is issued ("Order Date") and continuing through the date the Interim Agreements are approved or disapproved by the shareholders of certain registered investment companies, but in no event longer than 120 days from the Order Date ("Interim Period"). The order also would permit the payment of all fees earned under the Interim Agreements following shareholder approval.

**APPLICANTS:** Fundamental Funds, Inc. ("Fundamental Funds"), Fundamental Fixed-Income Fund ("Fixed-Income Fund"), The California Muni Fund ("Muni Fund," together with Fundamental Funds and Fixed-Income Fund, the "Funds"), and Cornerstone Equity Advisors, Inc. ("Cornerstone").

**FILING DATES:** The application was filed on October 8, 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 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 November 27, 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 by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Funds, 67 Wall Street, New York, NY 10005. Cornerstone, 67 Wall Street, New York, NY 10005.

**FOR FURTHER INFORMATION CONTACT:** Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, 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 fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

**Applicants' Representations**

1. The Funds are registered under the Act as open-end management investment companies. Fundamental Funds, a Maryland corporation, is organized as a series investment company and currently offers a single portfolio. Fixed-Income Fund, a Massachusetts business trust, is organized as a series company and currently offers three portfolios. Muni Fund, a Massachusetts business trust, offers a single portfolio. Cornerstone is registered as an investment adviser under the Investment Advisers Act of 1940.

2. On May 31, 1998, the boards of directors of the Funds ("Boards"), including a majority of directors who are not "interested persons" under section 2(a)(19) of the Act, decided not to renew the Funds' investment advisory agreement with Fundamental Portfolio Advisors, Inc. ("FPA Agreements"). Instead, the Boards entered into an interim investment advisory agreement with Tocqueville Asset Management L.P. ("Tocqueville") in reliance upon rule 15a-4 under the Act. Tocqueville's selection was made pending approval by the Funds' shareholders of an agreement and plan of reorganization ("Tocqueville Reorganization") whereby assets of each of the Funds would be transferred to a separate newly-created series of The Tocqueville Trust. In August 1998, the Boards decided to abandon the plans for the Tocqueville Reorganization and pursue other investment management arrangements.

3. On September 25, 1998, in accordance with section 15(c) of the Act, the Boards approved the Interim Agreements with Cornerstone pending its approval as successor adviser to the Funds and voted to recommend that the Interim Agreements be submitted to Funds' shareholders for approval.<sup>1</sup> Applicants anticipate that the Funds will distribute the proxy materials to the Funds' shareholders in November, 1998 and hold the shareholder meeting no later than January 26, 1999.

4. Applicants request an exemption to permit: (1) the implementation prior to obtaining shareholder approval, of the Interim Agreements for a period beginning on the Order Date and continuing through the date the Interim

<sup>1</sup> Each Board consisted solely of two disinterested director. Each Board currently consists of a single disinterested director.

Agreements are approved or disapproved by the shareholders of the Funds, but in no event longer than 120 days from the Order Date; and (ii) Cornerstone to receive, upon approval of the Interim Agreements by the Funds' shareholders, any and all fees earned under the Interim Agreements during the Interim Period. Applicants state that the Interim Agreements will be the same as the FPA Agreements that had been approved by the Funds' shareholders, except with respect to the parties, the effective and termination dates, and the inclusion of escrow arrangements described below.

5. Fees earned under the Interim Agreements during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated bank acting as escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (i) to Cornerstone, only upon approval of the Interim Agreements by the shareholders of the relevant Fund; or (ii) to the relevant Fund, in the absence of approval by its shareholders. Before amounts are released from the escrow account, the Boards will be notified.

#### **Applicants' Legal Analysis**

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the registered investment company. Applicants state that, as a result of the timing of Cornerstone's selection as the new investment adviser, the Funds were unable to solicit shareholder approval of the Interim Agreements.

2. Rule 15a-4 under the Act provides, in pertinent part, that if an investment advisor contract with a registered investment company is terminated by assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (i) the new contract is approved by that company's board of directors (including a majority of non-interested directors); and (i) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved the company's shareholders. Applicants state that they already have relied on rule 15a-4 for a 120 day period and therefore require a Commission order for the Interim Period.

3. Section 6(c) of the Act provides that the Commission 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. Applicants states that the requested relief meets this standard.

4. Applicants represent that the Interim Agreements will have the same terms and conditions as the FPA Agreements, except for the parties, dates of commencement and termination and the inclusion of escrow arrangements. Applicants also assert that each Fund will receive, during the Interim Period, the same investment advisory services, provided in substantially the same manner and at the same fee levels, and by personnel having substantially equivalent Qualifications, as it received under the FPA Agreements. Applicants state that, in the event there is any material change in the personnel providing material services, Cornerstone will apprise and consult the Boards to assure that the Boards are satisfied that the services provided by Cornerstone will not be diminished in scope or quality.

5. Applicants also state that the Boards diligently discharged their responsibilities by closely examining and reviewing numerous possibilities for management of the Funds during the period that the Funds relied on rule 15a-4. In light of various business considerations, operational issues, and due diligence issues, the selection of a new interim investment adviser was time-consuming. Applicants state, however, that the Boards conducted this search in a timely and efficient manner.

6. Applicants contend that to deprive Cornerstone of its fees for the Interim Period would be an unduly harsh and unreasonable penalty. Applicants note that the fees payable to Cornerstone under the Interim Agreements will not be released to Cornerstone by the escrow agent without the approval of the Funds' shareholders.

#### **Applicants' Conditions**

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

1. The Interim Agreements will have substantially identical terms and conditions as the FPA Agreements except for the parties, dates of commencement and termination and escrow provisions.

2. Fees earned by Cornerstone in respect of the Interim Agreements during the Interim Period will be paid

into an interest-bearing escrow account with an unaffiliated escrow agent, and amounts in the account (including interest earned on such paid fees) will be paid (a) to Cornerstone only upon approval of the related Fund shareholder, or (b) to the Funds, in the absence of such approval by the shareholders of the Funds.

3. Each Fund will hold a meeting of shareholders to vote on approval of the Interim Agreements on or before the 120th day following the Order Date.

4. Cornerstone will pay the cost of soliciting shareholder approval of the Interim Agreements.

5. Cornerstone will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds under the Interim Agreements will be at least equivalent, in the judgment of the Boards, to the scope and quality of services that were provided under the FPA Agreements. If personnel providing material services during the Interim Period change materially, Cornerstone will apprise and consult the Boards to assure that the Boards are satisfied that the services provided will not be diminished in scope or quality.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 98-30406 Filed 11-2-98; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. IC-23528; 812-11204]

### **Nike Securities L.P., et al.; Notice of Application**

November 6, 1998.

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

**ACTION:** Notice of application under section 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** The requested order would supersede a prior order and permit a terminating series of a unit investment trust ("UIT") to sell portfolio securities to a new series of the UIT.

**APPLICANTS:** Nike Securities L.P. (the "Sponsor"), First Trust Special Situations Trust (the "Trust"), any future UIT sponsored by the Sponsor (together with the Trust, the "Trusts")