

6. Awards are not transferable or assignable, except as the Committee shall specifically approve to facilitate estate planning or to a beneficiary upon a Participant's death or by will or the laws of descent and distribution.

7. The existence and nature of the Awards granted will be disclosed in accordance with standards or guidelines adopted by the Financial Accounting Standards Board for operating companies and the requirements of the SEC under Item 402 of Regulation S-K, Item 8 of Schedule 14A under the Exchange Act and Item 18 of Form N-2.

8. The maximum number of shares of BKF stock available for delivery in connection with Awards under the Plan shall be (i) 10% of BKF stock outstanding on the effective date of the Plan, plus (ii) 10% of the number of shares of BKF stock issued or delivered by BKF (other than pursuant to compensation plans) during the term of the Plan, subject to adjustment for corporate transactions. The maximum number of shares of Levco stock available for delivery in connection with Awards under the Plan shall be (i) 2,498, plus (ii) 19.99% of the number of shares of the Levco stock issued or delivered by Levco (other than pursuant to compensation plans) during the term of the Plan. The total amount of shares of BKF stock and Levco stock with respect to which incentive stock options may be granted shall not exceed three million and two thousand respectively.

9. The Board will review the Plan at least annually. In addition, the Committee periodically will review the potential impact that the grant, exercise, or vesting of Awards could have on BKF's and Levco's earnings and NAV per share, such review to take place prior to any decisions to grant Awards, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review, and the Committee will be authorized to take appropriate steps to ensure that neither the grant nor the exercise or vesting of Awards would have any effect contrary to the interests of BKF's investors. This authority will include the authority to prevent or limit the grant of additional Awards. All records maintained pursuant to this condition will be subject to examination by the SEC and its staff.

10. Awards are issuable only to BKF's directors, officers and employees and the officers and employees of certain of its subsidiaries. No one person shall be granted Awards relating to more than 35% of the shares reserved for issuance under the Plan. In any fiscal year, no person may be granted Awards related

to more than one million shares of BKF stock and 1,000 shares of Levco stock, which amounts may be adjusted by the Committee as it deems equitable to reflect certain corporate transactions or events that affect the stock of BKF and/or Levco.

11. The maximum amount of BKF stock subject to each Independent Director Initial Option is 1,000, and the maximum number of shares of BKF stock subject to each Independent Director Annual Option is 250, subject to adjustments for corporate transactions. The exercise price per share of BKF stock purchasable upon exercise of a director option will be equal to 100% of the FMV of a share of BKF stock on the date of grant of such option. A director option will expire at the earlier of (i) ten years from the date of grant or (ii) three months after the date the Independent Director ceases to serve as director of BKF for any reason.

12. Any loan made pursuant to the Plan will be required to be made with recourse against the borrower and be secured by the BKF stock and/or Levco stock to be acquired or other acceptable collateral. Furthermore, no loan may have a maturity of more than five years or bear interest at a rate below the "applicable federal rate" as defined in section 1274(d) of the IRC.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-31940 Filed 11-30-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23548; 812-11248]

Bankers Trust Company et al.; Notice of Application

November 24, 1998.

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

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") exempting applicants from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants seeks an order that would permit registered open-end management investment companies to invest their uninvested cash in affiliated money market funds.

APPLICANTS: Bankers Trust Company; Cash Management Portfolio, Treasury Money Portfolio, Tax Free Money Portfolio, NY Tax Free Money Portfolio, International Equity Portfolio, Equity 500 Index Portfolio, Short/Intermediate U.S. Government Securities Portfolio, Asset Management Portfolio, Capital Appreciation Portfolio, Intermediate Tax Free Portfolio, BT Investment Portfolios, BT Institutional Funds, BT Insurance Funds Trust, BT Pyramid Mutual Funds, BT Alex. Brown Cash Reserve Fund, Inc., Flag Investors Communications Fund, Inc., Flag Investors International Fund, Inc., Flag Investors Emerging Growth Fund, Inc., Flag Investors Short-Intermediate Income Fund, Inc., Flag Investors Value Builder Fund, Inc., Flag Investors Real Estate Securities Fund, Inc., and Flag Investors Equity Partners Fund, Inc. (and each of their current series and each subsequently created series), and any other currently existing or subsequently created registered open-end management investment company advised or sub-advised by Bankers Trust Company or an entity controlling, controlled by, or under common control with Bankers Trust Company ("Bankers Trust") (collectively, the "Affiliated Funds").

FILING DATES: The application was filed on August 5, 1998, and amended on November 24, 1998.

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 17, 1998, and should be accompanied by proof or 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, One Bankers Trust Plaza, 31st Floor, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: 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 Affiliated Funds are open-end management investment companies registered under the Act. Nine of the Affiliated Funds are money market funds subject to rule 2a-7 under the Act (together with any future money market Affiliated Fund, the "Money Market Funds"). The remaining Affiliated Funds are variable net asset value funds (together with any future variable net asset value Affiliated Fund, the "Non-Money Market Funds").

2. Bankers Trust serves as investment adviser to the Affiliated Funds. Bankers Trust, a New York banking corporation, is exempt from registration as an investment adviser under section 202(a)(11)(A) of the Investment Advisers Act of 1940. Bankers Trust and any entity controlling, controlled by, or under common control with Bankers Trust that serves as investment adviser to the Affiliated Funds are referred to as the "Investment Adviser." Bankers Trust also serves as custodian to all of the Affiliated Funds.

3. Each of the Affiliated Funds has, or may be expected to have, cash reserves that have not been invested in portfolio securities ("Uninvested Cash") in an account at its custodian that either may be invested directly in individual short-term money market instruments or may not otherwise be invested in any portfolio securities. Uninvested Cash may result from a variety of sources, including dividends or interest received or portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, or new monies received from investors. Uninvested Cash of the Affiliated Funds which are Money Market Funds also may result from a variety of sources, including late trades on portfolio securities, unsettled securities transactions, or new monies received from investors.

4. Applicants seek an order that would permit each of the Affiliated Funds, including the Money Market Funds, to utilize their Uninvested Cash to purchase shares of one or more of the Money Market Funds (the "Underlying Money Market Funds") (each Affiliated Fund purchasing shares of the Money Market Funds, an "Investing Fund," and collectively, "Investing Funds"), and would permit the Underlying Money Market Funds to sell their shares to, and redeem shares from, the Investing

Funds. Applicants state that the proposed transactions may reduce transaction costs, create more liquidity, increase returns on the Uninvested Cash, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that a registered investment company may not acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any persons or transactions from section 12(d)(1) if and to the extent the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) to permit the Investing Funds to purchase and redeem shares of the Underlying Money Market Funds in excess of the limits in sections 12(d)(1)(A) and (B), provided however, that in all cases each Investing Fund's aggregate investment of Uninvested Cash in shares of the Underlying Money Market Funds will not exceed 25% of the Investing Fund's total assets at any time.

3. Applicants maintain that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to address. Applicants submit that the Underlying Money Market Funds contain a highly liquid portfolio and there would be no undue influence from an Investing Fund. Applicants state that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Underlying Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee, or service fee. In addition, the Investment Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of the advisory fees of an Underlying Money Market Fund incurred by the Investing Fund.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines "affiliated person" to include persons under common control. Section 2(a)(9) of the Act defines "control" to mean the power to exercise a controlling influence over the management or policies of a company. Because the Affiliated Funds share a common investment adviser, each of the Affiliated Funds may be deemed to be under common control with the other Affiliated Funds. Accordingly, applicants state that the sale of shares of the Underlying Money Market Funds to the Investing Funds would be prohibited under section 17(a) of the Act.

5. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and the general purposes of the Act. Section 6(c) authorizes the Commission 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.

6. Applicants state that the terms of the proposed transactions meet the standards of sections 6(c) and 17(b). Applicants state that the shares of the Underlying Money Market Funds will be purchased and redeemed at their net asset value, which is the same consideration paid and received for the shares by any other shareholder. Applicants also state that the Investing Funds will retain their ability to invest their Uninvested Cash directly in money market instruments if they believe they can obtain a higher return. Applicants assert that the purchase of shares of the Underlying Money Market Funds by the Investing Funds will be effected in accordance with each Investing Fund's investment policies and that the proposed transactions are consistent with the general purposes of the Act.

7. Section 17(d) of the Act and rule 17d-1 prohibit an affiliated person of a registered investment company, acting as principal, from participating in any joint arrangement within the investment company unless the SEC has issued an order authorizing the arrangement.

Applicants state that the Investing Funds, by purchasing shares of the Underlying Money Market Funds, the Investment Adviser, by managing the assets of the Investing Funds invested in the Underlying Money Market Funds, and the Underlying Money Market Funds could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d-1.

8. Rule 17d-1 under the Act permits the SEC to approve a joint transaction covered by the terms of section 17(d). In determining whether to permit a transaction, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants assert that the investment by the Investing Funds in shares of the Underlying Money Market Funds will be on the same basis as any other shareholder and will be consistent with the policies and purposes of the Act.

Applicants' Conditions

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

1. Shares of the Underlying Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in Rule 2830 of the NASD's Conduct Rules).

2. The Investment Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of the advisory fees of an Underlying Money Market Fund incurred by the Investing Fund.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Underlying Money Market Funds only to the extent that the Investing Fund's aggregate investment in the Underlying Money Market Funds does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Underlying Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund, each Underlying Money Market Fund, and

any future fund that may rely on the order shall be advised by the Investment Adviser, or a person controlling, controlled by, or under common control with the Investment Adviser.

6. No Underlying Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-31938 Filed 11-30-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23549; 812-11392]

MFS Institutional Trust; Notice of Application

November 24, 1998.

AGENCY: Notice of application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant, MFS Institutional Trust ("Trust") on behalf of MFS Institutional Emerging Equities Fund ("Fund"), seeks an order to permit an in-kind redemption of shares of the Fund by an affiliated person of the Fund.

FILING DATES: The application was filed on October 30, 1998. Applicant has agreed to file an amendment to the application 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 applicant with a copy of the request, personally or by mail. Hearing request should be received by the Commission by 5:30 p.m. on December 18, 1998, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: 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 may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (tel. no. 202-942-8090).

Applicant's Representations

1. The Trust, organized as a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Fund is a series of the Trust. Massachusetts Financial Services Company ("Adviser"), registered under the Investment Advisers Act of 1940 ("Advisers Act"), is the Fund's investment adviser.

2. ICMA Retirement Trust ("Affiliated Shareholder") is a retirement trust for deferred compensation plans and qualified retirement plans established by state and local governments and their agencies and instrumentalities for their employees. The Affiliated Shareholder is not registered under the Act in reliance upon section 2(b) of the Act. The ICMA Retirement Corporation ("Retirement Corporation"), registered under the Advisers Act, serves as the investment adviser to the Affiliated Shareholder. The Affiliated Shareholder owns approximately 20.02% of the outstanding shares of the Fund.

3. The Retirement Corporation, acting in its fiduciary capacity with respect to the Affiliated Shareholder, has concluded that the assets of the Affiliated Shareholder invested in the Fund should be managed directly by the Adviser. Consequently, the Affiliated Shareholder has notified the Fund that it expects to redeem all of its shares of the Fund and place the proceeds in a separate account managed by the Retirement Corporation and subadvised by the Adviser. On October 28, 1998, the Fund's board of trustees, including all of the independent trustees, and the Adviser determined that it would be in the best interests of the Fund and its shareholders to redeem the shares of the Affiliated Shareholder in-kind.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, acting as principal, from knowingly purchasing any security from the company. Section 2(a)(3)(A) of the Act defines "affiliated person" of another person to include any person owning