

withdraw the Issuer's Security from listing on the Amex. The Board states that its decision to withdraw the Security from listing and registration on the Amex was based on numerous factors that indicated that, despite the Issuer's and Board's previous actions and efforts: (i) The Issuer can no longer financially afford to be a reporting company registered under the Exchange Act and listed on a national securities exchange and; (ii) for the foreseeable future, the Issuer and its stockholders will not be able to realize the benefits associated with being such a listed reporting company. The Issuer stated that it is current in contact with various market professionals concerning the listing of the Security on the OTC Pink Sheets prior to the delisting.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act³ and shall not affect its obligation to be registered under section 12(g) of the Act.⁴

Any interested person may, on or before March 23, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1-16677. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26371; 812-12949]

Burnham Investment Trust and Burnham Asset Management Corp.; Notice of Application.

February 27, 2004.

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

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Burnham Investment Trust (the "Trust") and Burnham Asset Management Corp. (the "Adviser").

FILING DATES: The application was filed on March 27, 2003, and amended on February 19, 2004.

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 March 23, 2004, 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 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, SEC, 450 5th Street, NW., Washington, DC 20549-0609. Applicants, Michael E. Barna, Burnham Asset Management Corp., 1325 Avenue of the Americas, 26th Floor, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Janis F. Kerns, Attorney Adviser, at (202) 942-0524, or Annette Capretta, 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 5th Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and has multiple series (each series, a "Fund," collectively the "Funds"), each with its own investment objectives, policies, and restrictions. The Adviser, a Delaware corporation, serves as the investment adviser to the Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").¹

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between the Trust, on behalf of each Fund, and the Adviser ("Advisory Agreement") that was approved by the Trust's board of trustees ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and each Fund's shareholder(s). Each Advisory Agreement permits the Adviser to enter into separate investment advisory agreements ("Sub-advisory Agreements") with sub-advisers ("Sub-advisers") to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund. Each Sub-adviser is or will be registered under the Advisers Act or exempt from registration. The Adviser monitors and evaluates the Sub-advisers and recommends to the Board their hiring, termination, and replacement. The Adviser recommends Sub-advisers based on a number of factors discussed in the application used to evaluate their skills in managing assets pursuant to particular investment objectives. The Adviser compensates the Sub-advisers

¹ The applicants also request that any relief granted pursuant to the application apply to future series of the Trust and any other existing or future registered open-end management investment company and its series that: (a) Are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (b) are managed in a manner consistent with the application; and (c) comply with the terms and conditions in the application (included in the term "Funds"). The Trust is the only existing registered open-end management investment company that current intends to rely on the order. The name of the Sub-adviser will not appear in the name of a Fund, or, if the name of any Fund contains the name of a Sub-adviser (as defined below), the name of the Adviser or the name of the entity controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Sub-adviser.

³ 15 U.S.C. 78(b).

⁴ 15 U.S.C. 78j(g).

⁵ 17 CFR 200.30-3(a)(1).

out of the fee paid to the Adviser by a Fund.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Sub-advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Adviser, other than by reason of serving as a Sub-adviser to one or more of the Funds ("Affiliated Sub-adviser"). None of the current Sub-advisers is an Affiliated Sub-adviser.

Applicants' Legal Analysis

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

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, 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 believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders rely on the Adviser to select the Sub-advisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-advisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of each Sub-advisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that each Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

Applicants' Conditions

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

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee Sub-advisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Sub-advisory Agreement with any Affiliated Sub-adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Sub-adviser change is proposed for a Fund with an Affiliated Sub-adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-adviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Sub-adviser, shareholders will be furnished all information about the new Sub-adviser that would be contained in a proxy statement. Each Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of any new Sub-adviser.

7. The Adviser will provide general management services to each Fund,

including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) set the Fund's overall investment strategies; (b) evaluate, select, and recommend Sub-advisers to manage all or part of the Fund's assets; (c) when appropriate, allocate and reallocate a Fund's assets among multiple Sub-advisers; (d) monitor and evaluate the performance of Sub-advisers; and (e) implement procedures reasonably designed to ensure that the Sub-advisers comply with each Fund's investment objectives, policies and restrictions.

8. No trustee or officer of the Trust, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-adviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-adviser or an entity that controls, is controlled by, or is under common control with a Sub-adviser.

9. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-4800 Filed 3-3-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26370]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 27, 2004.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February, 2004. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549-0102 (tel. 202-942-8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and