

incur greater total expenses, and this would be disclosed in a written statement to the Funds.

7. Applicants represent that investments in the Fund by the Plans would provide the plans with several benefits that are not presently available with the Account. The Plan participants would enjoy the protections of the Securities Act and the Act. In addition, investment of Plan assets in the Fund allows the Plan's participants and sponsors to monitor more easily the performance of their investments, as information concerning the investment performance of the Fund generally would be available in daily newspapers.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in relevant part, defines "affiliated person" to include: (a) Any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Although the SEC has taken a no-action position with respect to certain collective investment fund conversions, that position is conditioned on affiliated persons, or second-tier affiliates, of the Fund having no beneficial interest in the proposed transactions. Federated Investors (pub. avail. April 21, 1994). In the case of the EAI Plan, the transaction involves assets belonging to an employee benefit plan established for employees of EAI or other affiliated persons that could be considered second-tier affiliates of the Fund. In the case of the Harding Plan and Stockwood Plan, the transactions involve assets belonging to employee benefit plans with trustees, officers, employees, and/or affiliates of the sponsoring entities having a greater than five percent ownership interest in EAI. Applicants request an exemptive order to permit the Fund to accept in-kind transfers of the assets of the Affiliated Plans.

3. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent

with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

4. Applicants represent that the proposed transactions meet the requirements of section 17(b). Because the value of the shares each Plan receives in the Fund would be equal to fair market value of that Plan's *pro rata* share of assets in the Account, applicants represent that the transactions are fair to all involved and do not involve overreaching on the part of any person. In addition, applicants represent that because the investment policies and objectives of the Fund are identical to those of the Account, the transactions would be consistent with the portfolio objectives and policy of the Fund. Because the transactions would bring the Plans' investments under the supervision of the SEC, applicants represent that the transactions would be consistent with the provisions of the Act.

5. Applicants represent that the proposed transactions would comply with rule 17a-7 under the Act in most respects. Rule 17a-7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if, among other requirements, the transactions are affected at an "independent market price" and the investment company's board of directors reviews the transactions for fairness. Applicants would comply with rule 17a-7 to the extent possible, as stated in the conditions to the requested order.

6. Section 17(d) prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of SEC rules and regulations. Rule 17d-1 under the Act provides that no joint transaction covered by the rule may be consummated unless the SEC issues an order upon application. In passing upon such applications, the SEC considers whether participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act, and is not on a basis less advantageous than that of other participants.

7. Because EAI, as sponsor of the EAI Plan, may have legal title to the EAI Plan's assets invested in the Account, EAI may be viewed as acting as a principal in the proposed transactions. Applicants represent that, since the fiduciaries of each Plan would make an independent determination as to

whether to invest in the Fund and assets used to purchase shares of the Fund would be valued at current market prices, the terms received by the Affiliated Plans would not be more or less advantageous than those available to other investors. In addition, as discussed previously, applicants represent that the transactions would be consistent with the Act and the rules thereunder.

Applicants' Conditions

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

1. The purchase transactions will comply with the provisions of rule 17a-7(b)-(f).

2. The purchase transactions will not occur unless and until the Board of Trustees of the Fund (including a majority of Trustees that are not interested persons of the Fund) and the Plans' fiduciaries (or, in the case of the Affiliated Plans, parties independent of EAI) find that the transactions are in the best interest of the Fund and the Plans, respectively. In the case of the Fund, this determination and the basis on which it is made will be recorded fully in the records of the Fund.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-30223 Filed 12-11-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21569; 812-9842]

PCS Cash Fund, Inc., et al.; Notice of Application December 5, 1995

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

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

APPLICANTS: PCS Cash Fund, Inc., Morgan Stanley Fund, Inc., and Morgan Stanley Institutional Fund, Inc. (with their successors in interest,¹ the "Funds").

RELEVANT ACT SECTIONS: Order request under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) and rule 2a-7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and under section 17(d) of the Act and rule

¹ "Successors in interest" is herein limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

17d-1 thereunder to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applications request an order that would permit each applicant investment company to enter into deferred compensation arrangements with its directors who are not interested persons of the company.

FILING DATES: The application was filed on November 13, 1995, and amended on December 5, 1995

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 January 2, 1996, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1221 Avenue of the Americas, New York, New York, 10020.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942-0572, or C. David Messman, 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.

Applicants' Representations

1. Each of the Funds is a Maryland corporation registered under the Act as an open-end management investment company. The PCS Cash Fund, Inc. consist of three series, the PCS Money Market Portfolio, PCS Tax-Free Money Market Portfolio, and PCS Government Obligations Money Market Portfolio. The Morgan Stanley Money Market Fund is a series of the Morgan Stanley Fund, Inc. The Money Market Portfolio and Municipal Money Market Portfolios are series of the Morgan Stanley Institutional Fund, Inc. (Shares of the PCS Tax-Free Money Market Portfolio and the Morgan Stanley Money Market Fund are not currently being offered.) Morgan Stanley Asset Management Inc. ("Morgan Stanley") is the investment adviser to each Fund and is registered

under the Investment Advisers Act of 1940.

2. Each Fund has a board of directors, a majority of the members of which are not "interested persons" of such Fund within the meaning of section 2(a)(19) of the Act. Each of the directors who is not an "interested person" of one or more of the Funds receives annual fees which collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Funds. Applicants request an order to permit the directors who are not interested persons of any of the Funds and who receives director's fees from one or more of the Funds (the "Eligible Directors") to elect to defer receipt of all or a portion of their fees pursuant to a deferred compensation plan (the "Plan") and related election agreement entered into between each Eligible Director and the appropriate Fund. Under the Plan, the Eligible Directors could defer payment of directors' fees (the "Deferred Compensation") in order to defer payment of income taxes or for other reasons.

3. Applicants request that relief be extended to any other registered open-end investment company established or acquired in the future, or series thereof, for which Morgan Stanley or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Morgan Stanley, acts in the future as investment adviser or principal underwriter (the "Future Funds").

4. Under the Plan, the deferred fees payable by a Fund to a participating Eligible Director will be credited to a book reserve account established by the Fund (an "Deferred Fee Account"), as of the first business day following the date such fees would have been paid to the Eligible Director. Each Eligible Director may elect to have the return on his or her deferred fees measured as if the fees had been invested and reinvested in 90-day U.S. Treasury Bills or shares of one or more of the portfolios of the Fund of which he or she is a director (the "Underlying Securities").

5. The initial value of Deferred Compensation credited to a Deferred Fee Account will be effected at the respective current net asset value of each such open-end Fund. In the future, the Plan may be modified so that an Eligible Director may select as Underlying Securities shares of any other Fund besides the one of which he or she is a director.

6. The Funds' respective obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their respective general assets and

property. The Plan provides that the Funds will be under no obligation to purchase, hold or dispose of any investments under the Plan, but, if one or more of the Funds choose to purchase investments to cover their obligations under the Plan, then any and all such investments will continue to be a part of the respective general assets and property of such Funds.

7. Any participating money market series of a Fund that values its assets in accordance with a method prescribed by rule 2a-7 will buy and hold the Underlying Securities that determine the performance of the Deferred Fee Accounts in order to achieve an exact match between such series' liability to pay deferred fees and the assets that offset such liability. In addition, as a matter of prudent risk management, each Fund that is not a money market fund may purchase and hold shares of the Underlying Securities in amounts equal in value to the deemed investments of the Deferred Fee Accounts of its Eligible Directors. Thus, in cases where the Funds purchase shares of the Underlying Securities, liabilities created by the credits to the Deferred Fee Accounts under the Plan are expected to be matched by an equal amount of assets (i.e., a direct investment in Underlying Securities), which assets would not be held by the Fund if directors' fees were paid on a current basis.

8. Payments under the Plan will be made in generally equal annual installments over a five year period beginning on the first day of the year following the year in which the Eligible Director's termination of service occurred. In the event of death prior to the commencement of the distribution of amounts credited to a Deferred Fee Account, the balance of such account will be distributed to the Eligible Director's designated beneficiary in a lump sum as soon as practicable after such director's death. In the event of death after the commencement of the distribution of the Deferred Fee Account, the balance of such account will be distributed to the designated beneficiary over the remaining portion of the five-year period. In all other events, a Eligible Director's right to receive payments will be nontransferable. The Plan provides that the board of directors of the Fund has the right to accelerate or extend payment of amounts in the Deferred Fee Account at any time after the termination of the Eligible Director as a director. In the event of the liquidation, dissolution, or winding up of a Fund or the distribution of all or substantially all of a Fund's assets and property to its

shareholders (unless the Fund's obligations under the Plan have been assumed by a financially responsible party purchasing such assets) or in the event of a merger or reorganization of a Fund (unless prior to such merger or reorganization, the Fund's board of directors determines that the Plan shall survive the merger or reorganization), all unpaid amounts in the Deferred Fee Accounts maintained by such Fund shall be paid in a lump sum to the Eligible Directors on the effective date thereof.² The Plan will not obligate any participating Fund to retain a director in such a capacity, nor will it obligate any Fund to pay any (or any particular level of) directors' fees to any director.

Applicants' Legal Analysis

1. Applicants request an order which would exempt the Funds: (a) under section 6(c) of the Act from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) and rule 2a-7 thereunder, to the extent necessary to permit the Funds to adopt and implement the Plan; (b) under sections 6(c) and 17(b) of the Act from section 17(a)(1) to permit the Funds to sell securities for which they are the issuer to participating Funds in connection with the Plan; and (c) under section 17(d) of the Act and rule 17d-1 thereunder to permit the Funds to effect certain joint transactions incident to the Plan.

2. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact section 18(f)(1). The Plan would not: (a) induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or profits; (b) affect control of any Fund; or (c) confuse investors or convey a false impression as to the safety of their investments. All liabilities created under the Plan would be offset by equal amounts of assets that

would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth all such restrictions, which would be included primarily to benefit the Eligible Directors and would not adversely affect the interests of the directors or of any shareholder.

4. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. This provision prevents the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

5. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. The relief requested from section 13(a)(3) would extend to Future Funds for which Morgan Stanley becomes investment adviser subsequent to such Future Fund's initial public offering and that have investment policies prohibiting the purchase of investment company shares without shareholder approval. Applicants believe that relief from section 13(a)(3) is appropriate to enable the affected Funds to invest in Underlying Securities without a shareholder vote. Applicants will provide notice to shareholders in the prospectus of each affected Fund of the Deferred Compensation under the Plan. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Fund, and will at all times equal the value of the Fund's obligations to pay deferred fees (plus any increase in value thereof.)

6. Rule 2a-7 imposes certain restrictions on the investments of "money market funds," as defined under the rule, that would prohibit a Fund that is a money market Fund from investing in the shares of any other Fund. Applicants believe that the requested exemption would permit the Funds to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the

deferred fees would not affect net asset value.

7. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the relief requested from the above provisions satisfies this standard.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company. Funds that are advised by the same entity may be "affiliated persons" under section 2(a)(3)(C) of the Act.³ Applicants assert that section 17(a)(1) was designed to prevent, among other things, sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicants submit that the sale of securities issued by the Funds pursuant to the Plan does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred directors' fees with the Underlying Securities that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the 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, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. Applicants assert that the proposed transaction satisfies the criteria of section 17(b). The finding that the terms of the transaction are consistent with the policies of the registered investment company is predicated on the assumption that relief is granted from section 13(a)(3). Applicants also request relief from section 17(a)(1) under section 6(c) to the extent necessary to implement the Deferred Compensation under the Plan on an ongoing basis.

10. Section 17(d) and rule 17d-1 generally prohibit a registered

² Applicants acknowledge that the requested order would not permit a party acquiring a Fund's assets to assume a Fund's obligations under the Plan if such obligations would constitute a violation of the Act by the assuming party. Accordingly, such assumption would be permitted only if the assuming party is (a) another Fund, (b) another registered investment company that has received exemptive relief similar to that requested by applicants, or (c) not a registered investment company or is otherwise exempt from the provisions of the Act.

³ Section 2(a)(3)(C) of the Act defines the term "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person.

investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan "on a basis different from or less advantageous than that of" the affiliated person. Eligible Directors will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholders. Eligible Directors will receive tax deferral but the Plan otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a Eligible Director, the Eligible Director will be no better off, relative to the Funds, than if he or she had received directors fees on a current basis and invested them in Underlying Securities.

Applicants' Conditions

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

1. With respect to the relief requested from rule 2a-7, any money market Fund, or series thereof, that values its assets in accordance with a method prescribed by rule 2a-7 will buy and hold the Underlying Securities that determine the value of the Deferred Fee Accounts to achieve an exact match between such Funds' or series' liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other shareholders of such affiliated Fund.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-30224 Filed 12-11-95; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 2302]

Bureau of Oceans and International Environmental and Scientific Affairs; Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State.

ACTION: Notice.

SUMMARY: At its Fourteenth Meeting in Hobart, Tasmania, October 24 to November 3, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted the conservation measures listed below, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, define the reporting requirements, and specify measures that must be taken to minimize the incidental taking of non-target species.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments by January 11, 1996.

FOR FURTHER INFORMATION CONTACT: Erica Keen, Division of Polar Affairs, Office of Oceans Affairs (OES/OA/PA), Room 5805, Department of State, Washington, D.C. 20520, (202) 647-3262.

SUPPLEMENTARY INFORMATION

Conservation Measures Adopted at the Fourteenth Annual Meeting of CCAMLR

At its Fourteenth Annual Meeting in Hobart, Tasmania, October 24 to November 3, 1995, the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted the following conservation measures. The conservation measures addressing catch limitations were adopted in accordance with Conservation Measure 7/V and therefore enter into force immediately.

Conservation Measures Adopted in 1995

Conservation Measure 29/XIV^{1, 2}

Minimization of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area

The Commission, *Noting* the need to reduce the incidental mortality of seabirds during longline fishing by minimizing their attraction to fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Adopts the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water.³ Only thawed bait shall be used.

2. Longlines shall be set at night only (i.e., between the times of nautical twilight).⁴ During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

3. The dumping of offal shall be avoided as far as possible while longlines are being set or hauled; if discharge of offal is unavoidable, this discharge shall take place on the opposite side of the vessel to that where longlines are set or hauled.

4. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardizing the life of the bird concerned.

5. A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed. Specification of the streamer line and its method of deployment is given in the Appendix to this Measure. Details of the construction relating to the number and placement of swivels may be varied so long as the effective sea surface covered by the streamers is no less than that covered by the currently specified design. Details of the device dragged in the water in order to create tension in the line may also be varied.

6. Other variations in the design of streamer lines may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, providing that all other elements of this Conservation Measure are complied with.⁵

¹ Except for waters adjacent to the Kerguelen and Crozet Islands.

² Except for waters adjacent to the Prince Edward Islands.

³ For vessels using the Spanish method of longline fishing, weights should be released before line tension occurs; wherever possible weights of at least 6 kg mass should be used, spaced at 20 m intervals.

⁴ Wherever possible, setting of lines should be completed at least three hours before dawn (to reduce loss of bait to/catches of white-chinned petrels).

⁵ The streamer lines under test should be constructed and operated taking full account of the principles set out in WG-IMALF-94/19 (available from the CCAMLR Secretariat); testing should be carried out independently of actual commercial fishing and in a manner consistent with the spirit of Conservation Measure 65/XII.