

complete liquidation of the Fund.<sup>2</sup> Upon completion of the Reorganization, each former shareholder of the fund will be the owner of full and fractional shares of the Trust equal in number and aggregate net asset value to the shares he or she held in the Fund.

5. In assessing the proposed Reorganization, the Board considered the following factors: (a) The terms and conditions of the Agreement, including the fact that shareholders of the Fund, in effect, will receive shares of a substantially identical Trust in an exchange based on the relative net asset values of such shares; (b) no transaction costs or other charges will be incurred by shareholders of the Fund in connection with their acquisition of Trust shares; and (c) the tax-free nature of the Reorganization.

6. In connection with the proposed Reorganization, shareholders of the Fund were provided with a proxy statement dated August 4, 1995. At a special meeting held on September 28, 1995, shareholders of the Fund voted to amend the Fund's investment management agreement and certain of its fundamental investment policies, and approved the Reorganization.

7. All expenses relating to the Reorganization will be borne by the Fund and, if the Reorganization is consummated, will be assumed by the Trust.

#### Applicants' Legal Analysis

1. Sections 17(a)(1) and 17(a)(2) of the Act, in relevant part, prohibit an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 17(b) provides that the SEC may exempt a 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, that the proposed transaction is consistent with the policies of the investment company concerned and with the general purposes of the Act.

2. Rule 17a-8 generally exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by

reasons of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. Applicants may not rely on rule 17a-8 because, under section 2(a)(3)(D), Fred Alger and David Alger are affiliated persons of the Trust by virtue of their offices. Under section 2(a)(3)(B), the Fund may be an affiliated person of each of Fred Alger and David Alger by virtue of the fact that each may be said indirectly (through Associates) to own at least 5% of the Fund's outstanding shares. In addition, Fred Alger also owns or controls, directly and through trusts of which he is the trustee, 6.7% of the shares of the Fund, so that the Fund may be said to be an affiliated person of him on this basis as well. Accordingly, the Fund may be considered an affiliate person of an affiliated person of the Trust. The Board nonetheless reached the determinations required by rule 17a-8. Specifically, the Board determined that changing from a corporation to a business trust was in the best interest of the Fund, and that the interests of existing shareholders of the Fund would not be diluted as a result of the transaction.

3. Applicants believe that the proposed Reorganization is properly viewed as a mere change in the form of organization rather than as a disposition of property giving rise to section 17(a) concerns. Applicants also submit that the Reorganization satisfies the requirements of section 17(b). The Trust was created specifically for the purpose of effecting the Reorganization, and, prior to the Reorganization, will be simply a shell with nominal assets, no liabilities, and no business operations. The transfer of Fund shares for Trust shares of identical value will leave Fund shareholders with identical ownership positions, and no additional consideration will be paid by the Fund or its shareholders for the Trust shares. Because Fund shareholders will receive interests in the Trust identical to their previous interests in the Fund pursuant to a tax-free transaction, with no transaction costs or other charges imposed on shareholders, no party to the transaction will have the opportunity to influence the actions of the Fund or the Trust to the detriment of shareholders. Accordingly, applicants believe that the terms of the Reorganization, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any persons concerned.

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

Margaret H. McFarland,

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Applications of Capital Cargo International Airlines, Inc. for Issuance of New Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause (Order 95-12-29) Dockets OST-95-589 and OST-95-590.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue orders (1) finding Capital Cargo International Airlines, Inc., fit, willing, and able, and (2) awarding it certificates to engage in foreign charter air transportation of property and mail and interstate all-cargo air transportation.

**DATES:** Persons wishing to file objections should do so no later than January 2, 1996.

**ADDRESSES:** Objections and answers to objections should be filed in Dockets OST-95-589 and OST-95-590 and addressed to the Documentary Services Division (C-55, Room PL-401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet A. Davis, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366-9721.

Dated: December 20, 1995

Mark L. Gerchick,

*Acting Assistant Secretary for Aviation and International Affairs.*

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### Coast Guard

[CGD 95-087]

#### National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of availability.

<sup>2</sup>The Fund is currently the sole shareholder of the Trust, but will redeem its Trust shares prior to the Reorganization.