

Subsidiary will pay all expenses of its SPE.

CSW and Subsidiaries request authorization to enter into negotiations with underwriters to establish the interest rate, right of redemption and other terms and conditions applicable to the Debentures and Preferred Securities, subject to the receipt, or terms of an order under the Act.

CSW and the Subsidiaries intend to use the net proceeds of the Debentures to retire or replace, through redemption, repurchase or otherwise, outstanding first mortgage bonds or preferred stock (or any combination thereof), to pay outstanding short-term borrowings and for other general corporate purposes. CSW intends to use the net proceeds of the Debentures to loan or make equity contributions to the Subsidiaries to be evidenced by a Subsidiary's issuance of notes, preferred securities and/or common stock to CSW. Such notes and preferred securities would have substantially the same terms as the Debentures issued by CSW.

In connection with the issuance of Debentures and Preferred Securities, the applicants seek authorization to manage interest rate risk, through the use of interest rate management instruments, including interest rate swaps, caps, floors, collars and other similar instruments. The applicants represent that in no event would the aggregate notional amount of the interest rate swaps, at any one time, exceed the respective Offering Limit for CSW and the Subsidiaries, and that none of the interest rate swaps would be "leveraged".

The applicants also request authorization to deviate from the preferred stock provisions of the *Statement of Policy Regarding Preferred Stock Subject to the Public Utility Holding Company Act of 1935*, HCAR No. 13106 (Feb. 16, 1956), as amended in HCAR No. 16758 (June 22, 1970) to the extent applicable with respect to the Proposed Amendments.

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

Margaret H. McFarland,  
Deputy Secretary.

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[Rel. No. IC-22512; 812-10132]

**Sierra Prime Income Fund, et al.;  
Notice of Application**

February 14, 1997.

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

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Sierra Prime Income Fund (the "Trust"), Sierra Investment Advisors Corporation (the "Adviser"), and Sierra Investment Services Corporation (the "Distributor").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act for an exemption from sections 18(c) and 18(i) of the Act, and under section 17(d) of the Act and rule 17d-1 thereunder permitting certain joint transactions.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit certain closed-end investment companies to issue multiple classes of shares in the same portfolio of securities and impose distribution fees on one or more classes of shares.

**FILING DATES:** The application was filed on May 7, 1996 and amended on August 14, 1996, and on November 26, 1996.

Applicants have agreed to file an amendment during the notice period, the substance of which is incorporated herein.

**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 March 11, 1997 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 9301 Corbin Avenue, Suite 333, Northridge, California 91324.

**FOR FURTHER INFORMATION CONTACT:** Sarah A. Buescher, Staff Attorney, at (202) 942-0573, or Elizabeth G. Osterman, 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 a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered closed-end management investment company

organized as a Massachusetts business trust. The Trust has entered into an investment advisory agreement with the Adviser, a wholly-owned subsidiary of Sierra Capital Management Corporation. The Adviser has delegated the management of the Trust's investment portfolio to Van Kampen American Capital Management Inc. The Trust has entered into a distribution agreement with the Distribution pursuant to which the Distributor acts as principal underwriter or distributor for the Trust. Applicants request that relief extend to all future series of the Trust and all other registered closed-end investment companies with substantially the same investment policies and manner of operation as the Trust for which the Adviser, the Distributor, or any entity controlling, controlled by, or under common control with the Adviser or Distributor acts as adviser or distributor now or in the future.

2. The Trust's investment objective is to provide as high a level of income as is consistent with the preservation of capital primarily through investment in senior collateralized corporate loans ("Senior Loans") in the form of participation interests in Senior Loans made by banks or other financial institutions. The Trust and funds with similar investment policies and manners of operation are commonly known as "prime rate" funds. While the Trust's investment policies require it to be organized as a closed-end investment company, the Trust has characteristics largely associated with an open-end investment company. Similar to open-end funds, shares of the Trust are not listed on an exchange and are not traded over-the-counter on the National Association of Securities Dealers, Inc.'s ("NASD's") Automated Quotation National Market System. Also similar to open-end funds, the Trust engages in a continuous offering of its shares, and updates its registration statement annually. The Trust currently offers one class of shares to investors with a front-end sales load, as described below.

3. Because the Trust does not currently anticipate that a secondary market will develop for its shares, the Trust considers the shares to be illiquid. Therefore, consistent with section 23(c)(2) of the Act, the Trust intends to consider making tender offers each quarter to purchase its shares from shareholders at the then current net asset value ("NAV") per share. Section 23(c)(2) provides that a registered closed-end investment company may

purchase securities of which it is the issuer pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased.<sup>1</sup>

4. Applicants propose to continue to operate as a "prime rate" fund, with the addition of a multiclass pricing system (the "System"). On April 24, 1996, the board of trustees of the Trust approved the establishment of the System, subject to the receipt of the order requested in the application. Under the System, the Trust could provide investors with the option of purchasing shares: (a) Subject to a conventional front-end sales load and, under certain circumstances, an Early Withdrawal Charge ("EWC") ("Class A Shares"); (b) subject to an EWC, an asset-based distribution fee ("Distribution Fee"), and a service fee ("Service Fee") ("Class B Shares"); and (c) subject to an EWC, a Distribution Fee, and a Service Fee offered in connection with the Sierra Asset Management Program ("SAM Program") ("Class S Shares"). All fees charged by applicants under the System will comply with Rule 2830 of the NASD Conduct Rules, although such rule does not technically apply to the Trust. If applicants receive the relief requested, sales loads, Distribution Fees, EWCs, and exchange procedures for the Trust will be structurally similar to those in open-end investment companies. In addition, the only differences between the Trust's current and future operations would be the offering of multiple classes of shares, and the imposition of Distribution Fees and Service Fees, as described below.

5. Currently, Class A Shares of the Trust are offered to investors at NAV plus a front-end sales load ("Class A Sales Load"). The Class A Sales Load is graduated from 4.5% of the offering price per share for purchases of less than \$50,000 to 0% for purchases of \$1,000,000 or more. Applicants will waive the Class A Sales Load for certain purchases described in the application. The Trust may impose an EWC on certain Class A Shares redeemed within one or two years of purchase. The Class

A Shares subject to an EWC include those purchased at NAV without a sales charge, acquired through certain exchanges of shares, and purchased through certain employee benefit plans. The EWC for Class A Shares is waived for certain repurchases or tenders outlined in the application. The EWC for Class A Shares is calculated based on the lower of the shares' cost or current NAV. In determining whether the EWC is payable, the Trust will first redeem shares not subject to an EWC. Class A Shares are not subject to a Distribution Fee.

6. Applicants propose to offer Class B Shares of the Trust at NAV without the imposition of a sales load at the time of purchase. Applicants would impose a Distribution Fee on Class B Shares of up to .75% of the value of Class B's average daily net assets. The Distribution Fee, similar to a fee charged under a rule 12b-1 plan for open-end investment companies, would compensate the Distributor for its services and expenses in distributing Class B Shares, including payments made to broker-dealers and certain financial institutions as commissions. Class B Shares also may be subject to a Service Fee (as defined in NASD Conduct Rule 2830) of up to .25% of Class B's average daily net assets. The Service Fee would compensate certain broker-dealers, financial institutions, and others that provide personal services or maintain shareholder accounts.

7. An investor's proceeds from a redemption of Class B Shares made within a certain period after the purchase of the shares may be subject to an EWC that is paid to the Distributor. The amount of the EWC would be calculated by multiplying the applicable percentage charge by the lesser of: (a) The NAV of the shares at the time of purchase; or (b) the NAV of the shares at the time of redemption. Applicants currently expect that the EWC would be graduated from 4% to 0% over five years.

8. Class S Shares would be sold in connection with the SAM Program.<sup>2</sup> Class S Shares have the same characteristics as Class B Shares except for the SAM requirement and a modification to the EWC. The EWC for Class S Shares graduates from 5% to 0% over seven years. Shares purchased through the reinvestment of dividends and other distributions paid in Class S Shares will be Class S Shares, but will

not be subject to an EWC. A shareholder's termination of participation in the SAM Program will not affect the shareholder's continued ability to hold Class S Shares, but the shareholder would be precluded from purchasing additional Class S Shares.

9. All expenses incurred by the Trust will be allocated to each class of shares based upon the net assets of the Trust attributable to each class. Distribution Fees, Service Fees, and other incremental expenses that may be attributable to a particular class of shares will be charged directly to the net assets of the particular class. Incremental expenses include transfer agent fees, printing and postage expenses, state and federal registration fees, and other incremental expenses that should be allocated to a particular class of shares. Because of the higher fees or expenses paid by the holders of certain classes, the net income attributable to and the dividends payable on shares of one class may differ from the net income attributable to and the dividends payable on shares of other classes in the Trust. As a result, the NAV per share of the classes will differ at times. Expenses of the Trust allocated to a particular class of shares will be borne on a *pro rata* basis by each outstanding share of that class.

10. The Trust may create additional classes of shares or series that may differ from Class A, Class B, or Class S Shares in the following respects: (a) The amount of Distribution Fees; (b) voting rights with respect to each class' expenses; (c) the designation of each class; (d) the impact of any class expenses directly attributable to a particular class of shares; (e) the dividends and NAV resulting from differences in fees under a plan of distribution or class expenses; (f) the EWC structure; (g) the sales load structure; and (h) exchange privileges or conversion features.

Currently, Class A Shares of the Trust may be exchanged during a tender offer period for Class A shares of equal value of any portfolio of any open-end investment company advised by Sierra Advisors ("Sierra Funds"). In addition, Class A shares of Sierra Funds may be exchanged for Class A Shares of the Trust. Under the proposal, the Trust will permit shareholders at the time of a tender offer to exchange Trust shares for the same class of shares of the Sierra Funds (except for The Sierra Variable Trust) equal in value to the tendered Trust shares in lieu of cash. All exchanges of Trust shares will comply with rule 13e-4 under the Exchange

<sup>1</sup> Each tender offer will be made in accordance with section 13(e) of the Securities Exchange Act of 1934 (the "Exchange Act") and rule 13e-4 thereunder. Applicants received an exemption from rule 10b-6 under the Exchange Act from the SEC's Division of Market Regulation to permit the Trust to make tender offers for its shares while simultaneously engaging in a continuous offering of its shares. Applicants also received an exemption from rule 13e-4(f)(8)(ii) under the Exchange Act to permit the Trust to allow shareholders to exchange shares of the Trust for either cash or the cash-equivalent amount of the same class of shares of certain open-end investment companies advised by the Adviser. See Sierra Prime Income Fund (pub. avail. June 5, 1996).

<sup>2</sup> The SAM Program is an asset allocation program that provides two levels of professional management and diversification to clients. The Distributor determines an asset allocation strategy and investment policy for each SAM Program strategy.

Act.<sup>3</sup> In addition, shareholders of any portfolio of Sierra Funds could exchange their shares for shares of the Trust of equal value in lieu of cash. The exchanges of shares from the Sierra Funds into shares of the Trust will comply with rule 11a-3 under the Act, except to the extent that the Trust operates as a closed-end fund. Although applicants currently do not intend to do so, the Trust may in the future offer a class of shares that will convert into shares of another class of the Trust. Except to the extent that the Trust operates as a closed-end fund, it would comply with rule 18f-3 under the Act with respect to such conversions.

#### Applicant's Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to the extent that the proposed issuance and sale of multiple classes of shares might be deemed to result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(c), and violate the equal voting provisions of section 18(i) of the Act.

2. Section 18(c) provides, in relevant part, that a closed-end investment company may not issue or sell any senior security that is stock if, immediately thereafter, the company has more than one class of senior security that is a stock. An exception to this prohibition is that any such class of stock may be issued in one or more series provided no series has a preference or priority over any other series upon the distribution of the company's assets or in respect of payment of interest or dividends. The creation of multiple classes of shares may result in shares of a class having priority over another class as to the payment of dividends because shareholders of different classes would pay different Distribution Fees, Service Fees, and other incremental expenses that should be allocated to a particular class of shares.

3. Section 18(i) provides that each share of stock issued by a registered management company shall be a voting stock and have equal voting rights with every other outstanding voting stock. The System may violate section 18(i) because each class would be entitled to exclusive voting rights with respect to matters solely related to such class.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if the 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.

5. Applicants believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders. According to applicants, the proposed arrangements would permit the Trust to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services without the Trust assuming excessive costs or unnecessary investment risks.

6. Applicants represent that if the Trust was required to organize separate investment portfolios for each class of shares, it could face liquidity and diversification problems that could prevent the Trust from producing a favorable return. Under the proposal, investors would be able to benefit, according to applicants, by investing in an established, sizable fund. In addition, shareholders may be relieved of a portion of the fixed costs of the Trust because such costs, potentially, would be spread over a greater number of shares than they would be otherwise.

7. Applicants believe that their proposal does not raise the concerns that section 18 was designed to ameliorate to any greater degree than open-end investment companies' multiple class systems. Under rule 18f-3, open-end investment companies may offer multiple classes of shares without seeking individual exemptive orders from the SEC. Applicants further believe that their arrangement does not involve borrowings and it would not adversely affect the assets of the Trust.

8. Section 17(d) and rule 17d-1 prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants request an order pursuant to section 17(d) and rule 17d-1 to permit the Trust to impose Distribution Fees in a manner similar to rule 12b-1 fees imposed by open-end investment companies. While rule 12b-1 does not apply to closed-end investment companies, there is some question as to whether section 17(d) and rule 17d-1 apply to such fees.

9. In passing upon applications submitted pursuant to section 17(d) and rule 17d-1, the SEC considers whether the participation of such registered or controlled company in such joint enterprise, joint arrangement, or profit-sharing plan on the basis proposed 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.

10. Applicants have agreed to comply with rule 12b-1 as if the Trust is an open-end investment company. Applicants believe that any section 17(d) concerns in connection with the Trust financing the distribution of its shares should be resolved by this undertaking. By complying with rule 12b-1, applicants believe that the Trust would participate in substantially the same way and under substantially the same conditions as would be the case with an open-end investment company imposing distribution fees under rule 12b-1.

#### Applicants' Condition

Applicants expressly consent, in connection with this request for exemptive relief, to be subject to conditions applicable to open-end investment companies as set forth in rules 18f-3, 6c-10, and 12b-1 under the Investment Company Act, as amended from time to time, as if the rules applied to them.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-38285; File Nos. SR-AMEX-97-07, SR-BSE-96-11, SR-CHX-96-34, SR-CSE-97-03, SR-NASD-97-09, SR-NYSE-97-03, SR-PSE-97-05]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the American Stock Exchange, Inc., Boston Stock Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., and Pacific Stock Exchange, Inc., To Amend Each Exchange's Rules Concerning the Pre-Opening Application of the Intermarket Trading System

February 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 10, 1996, December 19, 1996, January 29, 1997, January 31, 1997, February 10, 1997, February 10, 1997, and February 11, 1997, respectively, the Boston Stock Exchange Incorporated ("BSE"), the Chicago Stock Exchange, Incorporated

<sup>3</sup> See, *supra*, note 1.