

1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

**DATES:** The revised discount rates are effective immediately and will be in effect through January 1999.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395-3381.

**Joseph J. Minarik,**

*Associate Director for Economic Policy, Office of Management and Budget.*

[OMB Circular No. A-94, Revised, October 29, 1992]

**Appendix C**

(Revised January 1998)

**Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses**

*Effective Dates.* This appendix is updated annually around the time of the President's budget submission to Congress. This version of the appendix is valid through the end of January, 1999. Copies of the updated appendix and the Circular can be obtained from the OMB Publications Office (202-395-7332) or in an electronic form through the OMB home page on the world-wide WEB, <http://www.whitehouse.gov/WH/EOP/omb>. Updates of this appendix are also available upon request from OMB's Office of Economic Policy (202-395-3381), as is a table of past years' rates.

*Nominal Discount Rates.* Nominal interest rates based on the economic assumptions from the budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

*Nominal Interest Rates on Treasury Notes and Bonds of Specified Maturities (in Percent)*

3-Year .....	5.6
5-Year .....	5.7
7-Year .....	5.8
10-Year .....	5.9
30-Year .....	6.1

*Real Discount Rates.* Real interest rates based on the economic assumptions from the budget are presented below. These real rates are to be used for discounting real (constant-dollar) flows, as is often required in cost-effectiveness analysis.

*Real Interest Rates on Treasury Notes and Bonds of Specified Maturities (in Percent)*

3-year .....	3.4
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5-year .....	3.5
7-year .....	3.5
10-year .....	3.6
30-year .....	3.8

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

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**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 23004; 812-10134]

**Daily Money Fund, et al.; Notice of Application**

January 20, 1998.

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

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the "Act") granting an exemption under section 6(c) of the Act from sections 13(a), 18(f), and 21(b) of the Act, under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and (3) of the Act, and under rule 17d-1 under the Act to permit certain transactions in accordance with section 17(d) of the Act and rule 17d-1.

**SUMMARY OF APPLICATION:** The requested order would permit certain registered open-end funds and unregistered funds to enter into insurance agreements with an affiliated mutual insurance company (the "Mutual Company"). The Mutual Company would provide limited insurance coverage for certain money market assets held by the funds.

**APPLICANTS:** Daily Money Fund, Fidelity Aberdeen Street Trust, Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Beacon Street Trust, Fidelity Boston Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Concord Street Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Destiny Portfolios, Fidelity Devonshire Trust, Fidelity

Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Government Securities Fund, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Institutional Cash Portfolios, Fidelity Institutional Tax-Exempt Cash Portfolios, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity Newbury Street Trust, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, North Carolina Capital Management Trust, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity Revere Street Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investments-Bond Fund, L.P., Fidelity U.S. Investments-Government Securities Fund, L.P., Variable Insurance Products Fund, Variable Insurance Products Fund II, Variable Insurance Products Fund III (collectively, the "Trusts"); Fidelity Canadian Asset Allocation Fund, Fidelity U.S. Money Market Fund, Fidelity Asset Manager Fund, Fidelity Canadian Bond Fund, Fidelity Canadian Growth Company Fund, Fidelity Canadian Income Fund, Fidelity Canadian Short Term Asset Fund, Fidelity Capital Builder Fund, Fidelity Emerging Markets Bond Fund, Fidelity Emerging Markets Portfolio Fund, Fidelity European Growth Fund, Fidelity Far East Fund, Fidelity Growth America Fund, Fidelity International Portfolio Fund, Fidelity Japanese Growth Fund, Fidelity Latin America Growth Fund, Fidelity North American Income Fund, Fidelity RSP Global Bond Fund, Fidelity Small Cap America Fund, Fidelity True North Fund, Fidelity Managed Income Fund, Fidelity Focus Consumer Industries Fund, Fidelity Focus Financial Services Fund, Fidelity Focus Health Care Fund, Fidelity Focus Natural Resources Fund, Fidelity Focus Technology Fund (collectively, the "Canadian Funds"); Fidelity Advisor U.S. Large-Cap Stock Fund (Bermuda) Ltd., Fidelity Advisor World Europe Fund (Bermuda) Ltd., Fidelity Advisor World Southeast Asia Fund (Bermuda) Ltd., Fidelity World Advisor World U.S. Limited Term Bond Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Government Investment Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Treasury Money Fund

(Bermuda) Ltd. (collectively, the "Fidelity Advisor World Funds"); Fidelity Investments Canada, Ltd. ("FICL"); Fidelity Management and Research Company ("FMR"); Fidelity Distributors Corporation ("FDC"); National Financial Services Corporation ("NFSC")<sup>1</sup>; each Trust and each registered investment company and series thereof that are currently or in the future advised by FMR or a person controlling, controlled by, or under common control with FMR (collectively with FMR, the "Adviser") or distributed by FDC or NFSC (collectively, the "Registered Funds"); the Fidelity Advisor World Funds, the Canadian Funds, and other pooled investment funds advised or in the future advised by the Adviser, that are offered exclusively outside the United States to non-U.S. residents (the "Unregistered Funds"); and state and local entities or accounts thereof advised or in the future advised by the Adviser that are exempt from regulation under the Act pursuant to section 2(b) of the Act (the "2(b) Entities") (collectively, the Registered Funds, the Unregistered Funds, and the 2(b) Entities are the "Funds").

**FILING DATES:** The application was filed on May 7, 1996, and amended on December 3, 1997.

**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 February 16, 1998, 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 consented. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Senior Counsel, at (202) 942-0572 (Division of Investment Management, Office of Investment Company Regulation), or Mercer E. Bullard, Special Counsel, at (202) 942-0659 (Division of Investment Management, Office of Chief Counsel).

<sup>1</sup> The terms "FDC" and "NFSC" include any other company controlled by or under common control with FMR that acts in the future as distributor for the Trusts or their series.

**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 (telephone (202) 942-8090).

### Applicants' Representations

#### A. Overview

1. Each of the Registered Funds is an open-end investment company registered under the Act and offers one or more portfolios. The Fidelity Advisor World Funds are portfolios of mutual funds established under the laws of Bermuda. The Canadian Funds are portfolios established under the laws of Canada. The only 2(b) Entity that currently may rely on the requested order is the Massachusetts Municipal Depository Trust ("Municipal Trust"), which is established pursuant to Massachusetts law.<sup>2</sup>

2. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, acts as investment adviser to each Registered Fund and its portfolios and provides the Registered Funds with administrative services. FICL acts as the investment adviser to the Canadian Funds. FDC and NFSC act as the distributors of all the Registered Funds. FMR, FICL, FDC, and NFSC are all direct or indirect subsidiaries of FMR Corp.

3. Applicants propose that certain Funds ("Participating Funds") enter into insurance agreements with the Mutual Company. The Mutual Company would provide insurance coverage for certain loss events ("Loss Events") described below with regards to certain money market securities ("Insurable Assets"). Initially, applicants expect that the only Participating Funds will be U.S. dollar denominated money market funds.<sup>3</sup> Other types of Funds may participate in the future if the Fund's Adviser and board of trustees determine that the insurance would be of value to the Fund and that the Fund had an

<sup>2</sup> In order to participate in the Mutual Company, a 2(b) Entity (including the Municipal Trust) would have to determine that the proposed investments in instruments through the proposed transactions are consistent with state laws or administrative rules regulating the 2(b) Entity. If not, it must seek to have those laws or rules amended. Accordingly, the Municipal Trust is not named as an applicant because it considers it premature to join formally.

<sup>3</sup> Money market funds are funds that have as their objective the generation of income and the preservation of capital. Money market funds are subject to rule 2a-7 under the Act, which contains several conditions limiting the risk and volatility of securities in which a money market fund may invest.

independent need for the insurance coverage.

#### B. Mutual Company Operations

1. The Mutual Company will be organized as a Bermuda mutual insurance company and will be governed by a board of directors consisting of employees of FMR or FMR Corp. and other persons associated with the Mutual Company. As a mutual insurance company, the Mutual Company will not issue stock. Proprietary interests in the Mutual Company will belong only to the Participating Funds as policyholders. Each Participating Fund will have equal voting rights, *i.e.*, each Participating Fund will have one vote. The board of trustees ("Trustees") of each Registered Fund will exercise the Fund's voting rights. The Funds will have voting rights with respect to (a) the election and removal of the Mutual Company's board of directors; (b) the dissolution or liquidation of the Mutual Company; (c) the amendment of the Mutual Company's articles of incorporation or other governing instrument; (d) any merger, consolidation or sale of substantially all of the Mutual Company's assets; and (e) additional matters relating to the Mutual Company as may be required or authorized by law.

2. Employees of the Adviser will be involved in the day-to-day operations of the Mutual Company, including determining and implementing the investment policies of the Mutual Company and managing its assets. The Mutual Company will employ an unaffiliated third party in Bermuda to conduct its administrative and ministerial activities.

3. The Mutual Company will operate on a break-even basis and any reserves and surplus will be used (a) to increase the Mutual Company's aggregate coverage and/or the risk retained by the Mutual Company and/or (b) to decrease the premiums charged by the Mutual Company. The Mutual Company will pay no dividends or distributions, and neither the Funds' interest in the Mutual Company nor the policies will be transferable. A Participating Fund that terminates its participation prior to the liquidation of the Mutual Company will not receive any proceeds, regardless of whether the Mutual Company has a surplus at the time. If the Mutual Company is liquidated when it has a surplus, Participating Funds at that time will divide the proceeds based on their relative levels of premium payments to the Mutual Company during its existence.

### C. Insurance Coverage

1. Insurable Assets are securities that, at the time of purchase, are money market securities eligible pursuant to rule 2a-7 under the Act (including repurchase agreements), other than: (i) U.S. Treasury securities backed by the full faith and credit of the U.S. Government, and (ii) other obligations all of the principal and interest of which are backed by the full faith and credit of the U.S. Government.

2. Loss Events include losses incurred by a Participating Fund in connection with a nonpayment of principal or interest by the issuer when due and payable, or the institution of a bankruptcy, insolvency, or similar proceeding with respect to the issuer and/or credit enhancement provider (if any) of an Insurable Asset. Loss Events also include losses in connection with a default relating to a credit enhancement. In addition, Loss Events include the inability of a Fund to recover fully the amount loaned under a repurchase agreement because of an event of default under the contract ("repo-related Loss Event"), and losses resulting if certain payments to a Participating Fund were subsequently considered a preference in bankruptcy ("preference-related Loss Event"). In the future, the definition of Loss Events could be expanded.

3. The Adviser or the Mutual Company will retain insurance professionals to set the aggregate annual premium based upon their assessment of the risk of Loss Events occurring with respect to Insurable Assets in which the Funds invest. The insurable professionals, using actuarial standards, will allocate the premium among the Participating Funds based on the risk characteristics of the different types of Insurable Assets held by each Fund.

4. The insurance policy ("Policy") written by the Mutual Company will be structured as a claims-made policy. The Policy will have a term of one year and will be renewable. Neither the Mutual Company nor a Participating Fund will be permitted to terminate or decrease its coverage during a policy year. The Policy will have no cash surrender value, will not be transferable, and will not provide for the payment of any dividend or other distribution.

5. Loss recoveries by the Participating Funds will be limited to \$100 million annually in the aggregate. A Participating Fund will recover for a Loss Event only to the extent that the amount of its loss exceeds the deductible amount of 0.30% of a Participating Fund's Insurable Assets, which will be applied on a per loss

basis for each Fund. There are no limits (other than the Policy limit) on the amount of loss recoverable by a Participating Fund in a particular year or with respect to any single issuer.

6. The Mutual Company also would provide coverage for certain wrongful acts on the part of past or present officers, Trustees, or employees of a Participating Fund that result in the Fund sustaining a Loss Event. This coverage would not apply to FMR in its capacity as investment adviser to the Funds. Wrongful acts would include any breach of duty, neglect, error, misstatement, misleading statement, omission or other act committed or wrongfully attempted by an employee resulting in a Participating Fund sustaining a loss attributable to a Loss Event. The coverage is not fidelity bond coverage and will not be subject to rule 17g-1 under the Act. The coverage would generally expand the existing errors and omissions coverage maintained by a Participating Fund by covering losses not currently covered by the Fund's existing policy. For example, the Mutual Company would cover losses that result from wrongful acts in connection with the purchase of an investment that was not rule 2a-7 eligible and that are in an amount that exceeds the amount covered under the Participating Fund's existing errors and omissions policy.

### D. Mutual Company Capitalization

1. As noted above, the Mutual Company will have an annual aggregate Policy limit of \$100 million. The Mutual Company initially will cover the first \$30 million in claims from payments collected from the Participating Funds and Fidelity, with third-party reinsurance covering the remaining \$70 million. The first \$30 million will be capitalized by the following sources: (i) A one-year loan by Fidelity of \$250,000 ("Fidelity Note"), (ii) a one-year demand note by the participating funds of \$450,000 in the aggregate ("Fund Notes"), (iii) first-year premiums of approximately \$2.7 million, (iv) assessable premiums of approximately \$11 million, and (v) a commitment by Fidelity of approximately \$17 million. If the Mutual Company's reserves are insufficient to cover claims, it will use its other assets in the following order: (a) The Fund Notes, (b) the FMR Note, (c) the premium assessment, (d) FMR's commitment, and (e) reinsurance.

2. The amount of each Fund Note will be determined on a *pro rata* basis in the same proportion as the Fund's premium payment. Because the Fund Notes are demand notes, a Participating Fund will not be required to pay any monies to the

Mutual Company unless these are one or more covered Loss Events exceeding the Mutual Company's available reserves and surplus funds. Fund Notes will be drawn upon and will be repaid to the Funds by the Mutual Company on a *pro rata* basis.

3. In addition, because annual premiums in the initial years of operation will be insufficient to permit the Mutual Company to provide the \$30 million of coverage it will retain, the Company's insurance policies will be "assessable." Thus, if a Loss Event occurs, each Participating Fund will be subject, in addition to its annual premium payments, to a special premium assessment initially estimated to be approximately two and one half times its annual premium payment. A Fund's annual and special assessment premiums will be paid from the general assets of the Fund, except that FMR will pay the premiums for Funds with "all-inclusive" management agreements, under which FMR is contractually obligated to pay all Fund expenses. The special premium assessment will be made on a *pro rata* basis by each Participating Fund in the same proportion as the Fund's then current *pro rata* shares of its regular premium payment, regardless of which Fund actually sustains a Loss Event. If reserves and surplus funds in the Mutual Company build up sufficiently, applicants expect the assessment rate to decline over time.

4. Assuming that all the Fund Notes are fully drawn upon and the Funds are subject to the maximum special premium assessment, applicants anticipate that the maximum commitment by all Participating Funds (which as of October 31, 1997, had approximately \$98 billion in net assets) to the Mutual Company would initially amount to approximately \$11 million resulting in a projected maximum commitment by the Funds that would not exceed .04% of the Funds' net assets. Thus, any monies required to be paid by a Participating Fund pursuant to the Fund Notes or special assessment in a given year would not cause the net asset value of a money market Fund to be reduced below \$1.00 per share.

5. The Mutual Company also will receive a \$17 million commitment from FMR backed by a letter of credit to cover Loss Events exceeding the Mutual Company's reserves and surplus funds and the Participating Funds' assessable policies. FMR's commitment to cover losses would stand behind the premiums and assessable policies of the Participating Funds and is expected to decline over time as reserves increase. The Mutual Company will pay FMR an

annual fee, at market rates, for the commitment. The rate of the annual fee will be the same amount as the lowest rate FMR would then pay a bank for a letter of credit in a comparable amount. The reinsurance obtained by the Mutual Company will stand behind the premiums, assessable policies, and FMR's commitment.

#### E. Insurance Claims

1. The order of the payment of claims will be based on the date the loss was incurred. In the event of multiple losses occurring on the same date in excess of the Policy limit, claims will be paid *pro rata* based on the amount of a fund's loss in excess of its deductible.

2. A Participating Fund that experiences a Loss Event typically would receive payment within approximately 30 days of filing an acceptable proof of loss with the Mutual Company. Entities providing reinsurance will be obligated to pay the Mutual Company within the same period of time. Normal insurance subrogation rights will be provided in connection with the insurance coverage.

3. Beginning the day of the Loss Event until the proceeds of a Participating Fund's claim are received from the Mutual Company, the net asset value of a Participating Fund that sustains a Loss Event will be computed by recording the amount of the expected recovery as a receivable on the books of the Fund, subject to the Policy limit. Prior to recording a receivable, a Participating Fund will have contacted the Mutual Company upon the occurrence of a Loss Event to determine the amount of available coverage. The recovery will be determined by calculating the amount of the Participating Fund's loss and comparing this number to the coverage remaining under the Policy limit for the policy year in question. The relevant receivable on a Participating Fund's books will be computable and recorded prior to the Fund's next net asset value determination following a Loss Event.

#### F. Disclosure of the Insurance

1. A brief description of the nature and extent of the insurance coverage will be contained in each Registered Fund's registration statement and, if required by generally accepted accounting principles ("GAAP"), its financial statements. The insurance coverage provided by the Mutual Company will not be used in connection with the marketing of the sale of shares of the Registered Funds, and thus will not be discussed in any marketing or sales literature distributed with respect to any Registered Fund.

### Applicants' Legal Analysis

#### A. Sections 13(a) and 18(f)

1. Section 18(f)(1) of the Act generally prohibits a registered open-end investment company from issuing any senior security. Section 13(a)(2) of the Act 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. Section 13(a)(3) of the Act provides that no registered investment company will, 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, or deviate from any policy recited in its registration statement pursuant to section 8(b)(3) of the Act. Each Registered Fund has a fundamental investment policy prohibiting the issuance of senior securities except as permitted under the Act. Applicants request relief from sections 13(a) and 18(f) to the extent that the assessable feature of the policy entered into by each Registered Fund and the obligation of each Fund pursuant to the Fund Notes could be deemed the issuance of senior securities by the Registered Funds, and thus be prohibited by section 18(f) and in contravention of a Registered Fund's fundamental policy against issuing senior securities pursuant to section 13(a)(2), and its deviation from that policy in contravention of section 13(a)(3). Relief from section 13(a)(3) would extend only to existing Registered Funds with a fundamental investment restriction prohibiting investments in senior securities and to any other Registered Funds that have such policies at the time the Adviser becomes the Fund's investment adviser.

2. Section 6(c) of the Act permits the SEC to exempt any person or transaction 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 policies of the Act. For the reasons provided below, applicants argue that the requested order meets the section 6(c) standards.

3. Applicants state that sections 13(a) and 18(f) resulted from Congress' desire to eliminate certain practices including (a) heavy borrowings by investment companies from the public without adequate assets and reserves, (b) the complexity of capital structures which induced investment companies to invest in risky securities to produce income necessary to cover the high cost of

borrowings, (c) the freedom of investment companies to borrow funds for speculation, and (d) the propensity of senior securities to mislead investors by conveying false impression of freedom from risk, and to increase the speculative nature of both the common stock and senior securities of investment companies.

4. Applicants state that the assessable feature of the policy and the obligations created by the Fund Notes will not give rise to the abuses at which sections 13(a) and 18(f) are directed. Applicants submit that neither the assessable feature nor the Fund Notes will involve speculative trading or leverage in the typical sense because a Registered Fund will not be buying portfolio securities with borrowed money. Applicants believe that the proposed insurance coverage will not create an unduly complicated capital structure. Applicants contend that, because of the limited coverage and the deductible, the insurance coverage will not induce a Registered Fund to invest in risky securities.

5. Applicants further state that neither the special assessment feature nor the Fund Notes will change the risk/reward characteristics of any Registered Fund. Applicants submit that payment of monies by a Registered Fund pursuant to the Fund Notes will have no effect on the Fund's net asset value because the Fund will record a receivable on its books and will receive interest at market rates on those monies. Further, applicants believe that, even assuming that all the Fund Notes are drawn upon and the Funds are subject to the maximum special assessment, it is projected that the maximum amount payable by the Participating Fund will be *de minimis* in relation to their total net assets.

#### B. Sections 17(a) (1) and (2)

1. Sections 17(a) (1) and (2) of the Act generally prohibit sales or purchases of securities to or from a registered investment company by any affiliated person of the company or any affiliated person of an affiliated person. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and anyone under common control with the investment company. Under section 2(a)(3), FMR, as investment adviser of each of the Funds, is an affiliated person of each Fund. Further, because the Funds either share a common investment adviser or have an investment adviser that is under common control with those of the other Funds, and most Registered Funds also share a common board of trustees or

other governing body, each Fund may be deemed to be under common control with all other Funds and, therefore, may be deemed to be an affiliated person of those Funds.

2. Each Participating Fund will have voting rights in the Mutual Company. To the extent that the Mutual Company could be deemed to be controlled by, or under common control with, the Participating Funds or the Adviser and thus an affiliated person of the Registered Funds, applicants believe that the insurance coverage could be deemed to be controlled by, or under common control with, the Participating Funds or the Adviser and thus an affiliated person of the Registered Funds, applicants believe that the insurance coverage could be deemed "property" subject to the prohibition of section 17(a)(1) against an affiliate of a Registered Fund selling property to the Fund. In addition, applicants state that FMR's commitment to the Mutual Company could be viewed as a sale of property to the Registered Funds (as the indirect beneficiaries of the commitment and payers of the fee) by an affiliated person of the Registered Funds under section 17(a)(1). Further, applicants state that FMR's contribution of cash to the Mutual company in exchange for the FMR Note could be considered the sale of a security for property by the Mutual Company, a company controlled by the Registered Funds, to FMR under section 17(a)(2). Applicants request exemptions from the provisions of sections 17(a)(1) and (2) to permit these transactions.

3. Section 17(b) of the Act permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned. For the reasons stated below, applicants believe that the terms of the transactions meet the standards of sections 6(c) and 17(b).

4. Applicants state that the insurance coverage will provide the Participating Funds and their shareholders with a means of reducing their risk of loss from defaulting Insurable Assets and repo- and preference-related Loss Events and, in some cases, protection against their net asset value per share dropping below \$1.00. Applicants believe that the proposed transactions do not involve overreaching because the coverage could not be obtained from an unaffiliated third-party issuer at a comparable price. In addition, applicants state that the proposed arrangement is consistent with the policies of each Participating Fund.

#### C. Sections 17(a)(3) and 21(b)

1. Section 17(a)(3) of the Act generally prohibits an affiliated person or an affiliated person of an affiliated person of a registered investment company from borrowing money or other property from the company or from any company controlled by the registered company except in certain circumstances not relevant here. Section 21(b) makes it unlawful for any registered investment company to lend money or property to any person, directly or indirectly, if the person controls or is under common control with the registered company.

2. Applicants seek relief from section 17(a)(3) and from section 21(b) to the extent that the Fund Notes, if drawn upon by the Mutual Company, could be deemed the borrowing of money or property from the Registered Funds by an affiliated person. Applicants state that sections 17(a)(3) and 21(b) were intended to prevent a party with strong potential adverse interests and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that are detrimental to the best interests of the investment company and its shareholders. Applicants believe that the Fund Notes do not raise these concerns because: (a) The amount of each Fund's Fund Note will be determined on a *pro rata* basis in the same proportion as the Fund's then current *pro rata* share of its regular premium payment, (b) all Fund Notes will have the same terms, which will be fair and reasonable to each Fund, and (c) any interest received by the Funds on the Fund Notes will be determined according to a market rate.

#### D. Section 17(d) and Rule 17d-1

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of an affiliated person, acting as principal, from participating in any joint arrangement in which the investment company participates unless the arrangement has been approved by the SEC. Applicants believe that the involvement of FMR and the Participating Funds in the Mutual Company could be deemed to constitute participation in a joint arrangement because of: (a) The payment of premiums by the Funds to the Mutual Company for insurance coverage and the rights of the Funds to certain payments from the Mutual Company in connection with a Loss Event, (b) the assessable feature of the Policies, (c) the receipt by FMR from the Mutual

Company of interest on the FMR Note and an annual fee for its commitment, and (d) FMR's contribution of cash to the Mutual Company in exchange for the FMR Note.

2. Rule 17d-1(b) provides that, in determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. For the reasons stated below, applicants believe that the requested relief meets these standards.

3. Applicants state that the Registered Funds will not participate in the arrangement on a basis that is different from or less advantageous than other Participating Funds because each Fund's premium will be allocated in accordance with the risk characteristics of the different types of Insurable Assets in which the Funds invest based upon actuarial standards. Applicants state that each Participating Fund's assessable portion will be on a *pro rata* basis according to its share of the regular premium payments. Applicants also state that, in the case of multiple loss events in a single year, the Mutual Company will make payments chronologically based on the date on which a Loss Event occurs up to the annual Policy limit. Applicants note that, while a Registered Fund may not recover on a loss in a particular year, all Registered Funds will be treated in the same manner.

4. Applicants state that the Mutual Company is intended to provide substantial benefits to the Participating Funds, including protection against losses incurred from defaulting Insurable Assets and from repo- and preference-related Loss Events. Further, applicants note that the interest received by FMR on the FMR note and the fee it will receive for its commitment to cover losses of the Mutual Company will be determined according to a market rate. Applicants state that the fees will compensate FMR for assuming significant economic risks and that FMR will receive no other direct benefits from its involvement with the Mutual Company.

#### Applicants' Conditions

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

1. The Trustees, including a majority of the Trustees who are not "interested persons" of any Registered or Unregistered Fund, as defined in section

2(a)(19) of the Act ("Disinterested Trustees"), will initially and at least annually thereafter, in each year a Registered Fund participates in the insurance arrangement, determine (a) that the Policy is in the best interests of the Registered Fund and its shareholders, (b) that any amounts paid or potentially payable to the Mutual Company by the Registered Fund including, without limitation, the premiums, the special assessable premium, and the Fund Notes, are fair and reasonable to the Registered Fund, (c) after reviewing all claims paid or denied by the Mutual Company, that the settlement of all claims has been reasonable and fair to the Registered Fund, and (d) that any procedures adopted pursuant to condition 3 have been complied with.

2. Any conflicts that may arise concerning the Participating Funds relating to the operation or policies of the Mutual Company will be resolved on an equitable basis by a committee of the Disinterested Trustees of the Registered Funds.

3. The Trustees of each Registered Fund, including a majority of the Disinterested Trustees, will adopt procedures that are reasonably designed to provide that the conditions in the application have been complied with. The procedures will include, without limitation, the guidelines set forth in the Statement of Policy Regarding Coverage, attached as Exhibit D to the application, as it may be amended from time to time.

4. Participation by a Registered Fund in the Mutual Company will be consistent with the policy of the Fund, as recited in its registration statement and reports filed under the Act.

5. The nature and extent of the insurance coverage will be briefly described in each Registered Fund's current registration statement and, if required by GAAP, in each Registered Fund's financial statements. Other than this disclosure, the insurance coverage provided by the Mutual Company will not be used in connection with the marketing of the sales of shares of the Registered Funds.

6. Each Registered Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (3) and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any Fund participated in the Mutual Company, the first two years in an easily accessible place, a written record relating to the premiums paid and any claims made by the Fund and any action taken by the Mutual Company with respect to the

claim, and the information or materials upon which the determinations described in condition (1) were made. The Mutual Company will make its records available to the Trustees and the staff of the SEC upon request.

7. The Mutual Company will pay FMR for its commitment to cover losses at a rate not to exceed the lowest rate FMR would then be paying a bank for a letter of credit in a comparable amount.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39556; File No. SR-CBOE-97-65]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Placing of Orders Over the Outside Telephone Lines at the Equity Trading Posts

January 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE or the "Exchange") proposes to amend its policy<sup>1</sup> governing the use of member-owned or Exchange-owned telephones located at the equity trading post on the floor of the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

<sup>1</sup> The two regulatory circulars that govern the use of telephones at the equity trading posts were approved by the Commission on October 28, 1996 [(see SR-CBOE-96-15, Securities Exchange Act Release No. 37876 (October 28, 1996), 61 FR 56728 (November 4, 1996)] and on March 2, 1994 [See SR-CBOE-93-24, Securities Exchange Act Release No. 33701 (March 2, 1994)].

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

The purpose of the proposed rule change is to amend the policy currently governing the use of telephones at equity option trading posts. The proposed amendment would permit floor brokers at these posts to receive orders, over telephones located at the equity option posts, when (i) those calls are patched through a booth on the floor as further described below and (ii) the order is from U.S. registered broker-dealers. The revised policy will be issued in a regulatory circular. In addition, the Exchange has filed as Exhibit B to the filing a proposed form of application and agreement to be used by members seeking approval to use the telephones at the equity option posts.

##### Orders Entered by Broker-Dealers

The proposed change is the latest in a continual expansion of direct telephone access of orders to the equity option trading posts since a telephone policy was first filed with the Commission in 1993, see SR-CBOE-93-24. The regulatory circular that was the subject of that original filing prohibited any orders from being transmitted over the outside telephone lines at the equity option posts. (At that time and today, orders could and can be transmitted over the intra-floor lines from one point on the Exchange floor to another.) In 1996, the Exchange liberalized its telephone policy in the equity crowds to allow market-makers to place orders over the outside telephone lines directly with floor brokers at the equity option posts.<sup>2</sup> This change allowed market-makers who need to be off the floor to transmit their orders more efficiently.

The current proposed change would expand the ability to transmit orders entered by broker-dealers over

<sup>2</sup> See SR-CBOE-96-15, approved in Securities Exchange Act Release No. 37876 (October 28, 1996), 61 FR 56728 (November 4, 1996).