

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23175; 812-11096]

### Pax World Fund, Incorporated, et al.; Notice of Application

May 7, 1998.

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

**ACTION:** Notice of application for an order under sections 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1) (A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act.

**SUMMARY OF APPLICATION:** The requested order would permit certain registered open-end management investment companies to invest excess cash in an affiliated money market fund.

**APPLICANTS:** Pax World Fund, Incorporated ("PWF"), Pax World Growth Fund, Inc. ("PWGF"), Pax World Money Market Fund, Inc. ("PWMMF"), and Pax World Management Corp. ("PWMC").

**FILING DATES:** The application was filed on April 2, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 1, 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 contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 222 State Street, Portsmouth, NH 03801-3853.

**FOR FURTHER INFORMATION CONTACT:** Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, or George J. Zornada, 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 Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20459 (tel. 202-942-8090).

#### Applicants' Representations

1. PWF and PWGF are open-end management investment companies registered under the Act and organized as Delaware corporations. PWMC, a Delaware corporation, serves as the investment adviser to PWF and PWGF. H.G. Wellington Capital Management ("HGW") serves as investment sub-adviser to PGWF. HGW and PWMC are registered under the Investment Advisers Act of 1940 ("Advisers Act").

2. PWMMF is an open-end management investment company registered under the Act and organized as a Maryland corporation. PWMMF seeks to maintain a stable net asset value and is subject to rule 2a-7 under the Act. PWMC serves as investment adviser to PWMMF. Reich & Tang Asset Management, L.P. ("R&T") serves as investment sub-adviser to PWMMF. R&T is registered under the Advisers Act. (PWMC, HGW, and R&T, collectively, the "Investment Advisers").

3. PWF and PWGF have, or may be expected to have, uninvested cash ("Uninvested Cash") held by their custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new monies received from investors. Currently, PWF and PWGF may invest Uninvested Cash directly in individual short-term money market instruments.

4. PWF and PWGF (the "Investing Funds") wish to have the flexibility to invest their Uninvested Cash in PWMMF.<sup>1</sup> Any investment of Uninvested Cash in shares of PWMMF will be in accordance with each Investing Fund's investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectuses and statements of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

#### Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's outstanding total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by the investment company.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction (or classes thereof) from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors.

3. Applicants request relief under section 12(d)(1)(J) to permit the Investing Funds to use Uninvested Cash to acquire shares of PWMMF in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases the Investing Fund's aggregate investment of Uninvested Cash in shares of PWMMF will not exceed 25% of the Investing Fund's total assets at any time. Applicants also request relief to permit PWMMF to sell its securities to an Investing Fund in excess of the percentage limitations in section 12(d)(1)(B). Applicants represent that PWMMF will not acquire securities of any other investment company in excess of the limitation contained in section 12(d)(1)(A) of the Act.

4. Applicants believe that the proposed arrangement does not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of PWMMF sold to the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee. In addition, the Investment Advisers will waive their investment advisory fees for each Investing Fund in an amount that offsets the amount of the advisory fees of PWMMF incurred by the Investing Fund.

5. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser to the investment company and any person directly or indirectly controlling, controlled by, or under common control with the investment adviser. The Investing Funds and PWMMF share a common investment adviser and thus may be deemed to be under common control. As a result, section 17(a) would prohibit the sale of the shares of PWMMF to the Investing Funds, and the redemption of the shares by PWMMF.

6. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed 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 proposed transaction is consistent with the policy of each investment company concerned, and with the general purposes of the Act.

7. Section 6(c) of the Act permits the Commission to 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.

8. Applicants submit that their request for relief satisfies the standards in sections 17(b) and 6(c). Applicants state that the Investing Funds will retain their ability to invest Uninvested Cash directly in money market instruments as authorized by their respective investment objectives and policies, if they believe they can obtain a higher rate of return, or for any other reason. Similarly, PWMMF has the right to discontinue selling shares to any of the Investing Funds if PWMMF's board of directors determines that such sale would adversely affect its portfolio management and operations. In addition, applicants note that shares of PWMMF will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder.

9. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating or effecting any transaction in connection with any joint enterprise

or joint arrangement in which the investment company participates. Applicants believe that each Investing Fund, by participating in the proposed transactions, and each Investment Adviser of an Investing Fund, by managing the assets of the Investing Funds and PWMMF, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d-1 under the Act.

10. In considering whether to grant an exemption under rule 17d-1, the Commission considers whether the investment company's participation in such joint enterprise 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. Applicants submit that the Funds will participate in the proposed transactions on a basis not different from or less advantageous than that of any other participant and that the transactions will be consistent with the Act.

#### Applicants' Conditions

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

1. Shares of PWMMF sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD's Conduct Rules).

2. The Investment Advisers will waive their advisory fee for each Investing Fund in an amount that offsets the amount of the advisory fees of PWMMF incurred by the Investing Fund.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, PWMMF only to the extent that the Investing Fund's aggregate investment in PWMMF does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of PWMMF will be in accordance with each Investing Fund's respective socially responsible criteria and investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectuses and statements of additional information.

5. Each Investing Fund and any future fund that may rely on the order requested hereunder will be advised by

PWMC or an entity controlling, controlled by, or under common control with PWMC.

6. PWMMF shall not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-12810 Filed 5-13-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Rogers Cantel Inc., 10½% Senior Secured Notes Due 2006; 9¾% Senior Secured Debentures Due 2008; 9¼ Senior Secured Debentures Due 2016) File No. 1-14393

May 8, 1998.

Rogers Cantel Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities ("Securities")<sup>1</sup> from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities were issued pursuant to three indentures, each dated May 30, 1996, and qualified under the Trust Indenture Act of 1939, between the Company and The Chase Manhattan Bank (formerly Chemical Bank) as U.S. Trustee and CIBC Mellon Trust Company (formerly The R-M Trust Company) as Canadian Trustee and were sold in May 1996 pursuant to the Registration Statement filed with the Commission pursuant to the Securities Act of 1933. The Securities are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on the NYSE. There are currently Cdn\$160,000,000 of the 2006 Notes, US\$510,000,000 of the 2008 Debentures; and US\$175,000,000 of the

<sup>1</sup> When referred to individually, the Securities are identified by their due dates (i.e., the "2006 Notes", the "2008 Debentures", and the "2016 Debentures").