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**Thomas J. Koerber,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23904; 812-11550]

### Colchester Street Trust, et al., Notice of Application

July 16, 1999.

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

**ACTION:** Notice of application for an order under sections 6(c), 12(d)(1)(J) and 17(b) of the Investment Company Act of 1940 (the "Act") for exemptions from sections 12(d)(1) and 17(a) and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

*Summary of Application:* Applicants seek an order that would amend a prior order ("Prior Order")<sup>1</sup> to permit certain registered investment companies and other entities ("Participating Funds") to invest investment uninvested cash ("Uninvested Cash") and cash collateral received in connection with a securities lending program ("Cash Collateral") in shares of affiliated money market funds and/or short-term bond funds ("Investment Funds").

*Applicants:* Colchester Street Trust, Fidelity Aberdeen Street Trust, Fidelity Advisor Korea Fund, Inc., Fidelity Advisor Emerging Asia Fund, Inc., 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 Fund, 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 Covington Trust, Fidelity Destiny Portfolios, Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Hastings Street Trust, Fidelity

Hereford Street Trust, Fidelity Income Fund, 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 New York Municipal Trust, Fidelity New York Municipal Trust II, Fidelity Oxford Street 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. Investment-Bond Fund, L.P., Fidelity Investments-Government Securities Fund, L.P., Newbury Street Trust, Variable Insurance Products Fund, Variable Insurance Products Fund II, Variable Insurance Products Fund III (collectively, the "Trust"); Fidelity Advisor World Global High Income Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Intermediate Bond Fund (Bermuda) Ltd., Fidelity Advisor World International Bond Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Large-Cap Stock Fund (Bermuda) Ltd., Fidelity Advisor World Europe Fund (Bermuda) Ltd., Fidelity Advisor World Southeast Asia Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Treasury Money Fund (Bermuda) Ltd. (collectively, the "World Funds"), Fidelity Management & Research Company ("FMR"); Fidelity Group Trust for Employee Benefit Plans ("Group Trust") Fidelity Management Trust Company ("FMTC"); Fidelity Service Company, Inc. ("FSC"); Fidelity Investments Institutional Operations Company, Inc. ("FIIOC"); Fidelity Investments Money Management, Inc. ("FIMM"); all other registered investment companies and series thereof that are advised by FMR or a person controlling, controlled by, or under common control with FMR (collectively, the "Adviser") and all other registered investment companies and series thereof for which the Adviser in the future acts as investment adviser (collectively, the "Registered Funds"); the World Funds, and other pooled investment funds advised or in the future advised by the Adviser, or a person controlling, controlled by, or under common control with the Adviser, offered exclusively outside the United States to non-U.S. residents (the "Off-Shore Funds"); 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"); collective trust funds of the Group Trust, the trustee for which, or in the future the trustee for which, is FMTC, that are excepted from the definition of investment company by section 3(c)(11) of the Act (the "3(c)(11) Entities"); and individual institutional accounts advised by the Adviser ("Institutional Accounts").<sup>2</sup>

*Filing Dates:* The application was filed on March 26, 1999. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, period.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested person 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 August 10, 1999, 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, NW, Washington, DC 20549-0609. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Senior Counsel, at (202) 942-0572, or Nadya B. Roytblat, 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 at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549-0102 (tel. (202) 942-8090).

### Applicants' Representations

1. Each of the Registered Funds is registered under the Act and most of the Trusts are series companies. The Participating Funds include the Registered Funds ("Participating Registered Funds"), Off-Shore Funds, 2(b) Entities, 3(c)(11) Entities, and Institutional Accounts. The current Off-Shore Funds are established under the

<sup>1</sup> *Daily Money Fund, et al.*, Investment Company Act Release Nos. 22236 (Sept. 20, 1996) (notice) and 22285 (Oct. 16, 1996) (order).

<sup>2</sup> All existing entities that currently intend to rely on the requested order are named as applicants. Any other existing entity and future entity will rely on the requested order only in accordance with the terms and conditions of the application.

laws of Bermuda. Each 3(c)(11) Entity is organized as a separate pooled account under the Fidelity Group Trust, for which FMTC acts as trustee. FMR, an investment adviser registered under the Investment Advisers Act of 1940, acts as each Participating Fund's investment manager and provides the Participating Funds with administrative services.

2. Certain of the Investment Funds (the "Central Funds") are series of Fidelity Revere Street Trust, an open-end management investment company registered under the Act. The Central Funds have not registered their shares under the Securities Act of 1933 ("Securities Act"). Shares of the Central Funds will be sold only to the Participating Funds. FIMM, a wholly-owned subsidiary of FMR, serves as investment adviser to the Central Funds. The other Investment Funds are open-end management investment companies registered under the Act, and their shares are registered under the Securities Act. These Investment Funds are advised by FMR. All Investment Funds will be taxable or tax-exempt money market funds or short-term bond funds with a portfolio maturity of three years or less.

3. Approximately 45 Registered Funds participate in a securities lending program in which they earn additional income by lending their portfolio securities. Cash Collateral received by the Registered Funds may be invested in shares of investment companies approved by the board of trustees of the Registered Fund and that have investment objectives that are consistent with the investment restrictions and guidelines of the Registered Fund.

4. The Prior Order permits Participating Funds to invest cash that has otherwise not been invested in portfolio securities in the Central Funds. In addition, the Prior Order permits the Participating Funds and the Central Funds to engage in interfund purchase and sale transactions in securities that would otherwise be effected in reliance on rule 17a-7 under the Act ("Interfund Transactions").

5. Applicants request an order amending the Prior Order to permit the Participating Funds to invest Cash Collateral and Uninvested Cash in other Investment Funds in addition to the Central Funds. The requested relief would permit (a) the Participating Funds to use Cash Collateral and Uninvested Cash to purchase shares of the Investment Funds; (b) the Investment Funds to sell their shares to the Participating Funds; (c) the Investment Funds to redeem their shares from the Participating Funds; and (d) the Adviser to effect these purchases

and sales (collectively, these transactions are the "Cash Transactions").

6. The board of trustees of the Participating Registered Funds has or will approve the Investment Funds as vehicles for the investment of Cash Collateral and Uninvested Cash. The investment by each Participating Registered Fund in shares of the Investment Funds will be in accordance with that Registered Fund's investment policies and restrictions as set forth in its registration statement. A Participating Registered Fund that is a money market fund will not invest its Uninvested Cash or Cash Collateral in an Investment Fund that does not comply with the requirements of rule 2a-7 under the Act.

### Applicants' Legal Analysis

#### A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides, in relevant part, that no investment company may acquire securities of a registered 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. Applicants state that the investment of Uninvested Cash and Cash Collateral by the Registered Funds and Off-Shore Funds in shares of the Investment Funds is subject to the limits in sections 12(d)(1)(A) and (B).

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction 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. Applicants request relief under section 12(d)(1)(J) to permit the Registered Funds and the Off-Shore Funds to invest in the Investment Funds in excess of the limits in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B)

were intended to prevent. Applicants state that the proposed arrangement will not result in inappropriate layering of either sales charges or investment advisory fees. Shares of the Investment Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee. Applicants state that since investment advisory fees are calculated on the net, rather than the total, assets of the Participating Registered Funds, and since Cash Collateral does not increase net assets, the Participating Registered Funds would not pay duplicative advisory fees with respect to investments made with Cash Collateral. Applicants further state advisory fees with respect to an investment of Uninvested Cash will be subject to condition 2 below. Applicants also state that because each Participating Fund will invest in an Investment Fund on the same basis as each other Participating Fund, there is no risk that the Adviser would exercise undue influence to advantage any Participating Funds to the detriment of others.

#### B. Section 17(a)

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person, acting as principal, to sell or purchase any security to or from such investment company. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person or the investment adviser to an investment company. The Adviser is an affiliated person of each Registered Fund under section 2(a)(3). Because the Participating Funds either share a common investment adviser or have an investment adviser that is under common control with the investment adviser to another Participating Fund, and most Registered Funds also share a common board of trustees, the Participating Funds may be deemed to be under "common control" and therefore affiliated persons of each other. As a result, applicants state that section 17(a) would prohibit the Cash Transactions.

2. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the term 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 registered investment company

concerned, and the proposed transaction is consistent with the general policy of the Act. Section 6(c) under the Act permits the SEC to exempt any person or transaction from any provision of the Act, if such 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.

3. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the Cash Transactions will provide the Participating Funds and their shareholders with a means of obtaining high current rates of return on Cash Collateral and Uninvested Cash, reducing aggregate counterparty exposure on repurchase agreements, protecting liquidity, reducing credit exposure to custodian banks, reducing transaction costs, and diversifying risk. In addition, applicants state that the Cash Transactions will be effected in accordance with each Participating Fund's investment restrictions and will be consistent with each Participating Registered Fund's policies as set forth in its registration statement.

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

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. As noted above, applicants are affiliated persons of each other. Applicants state that Cash Transactions may be deemed a joint enterprise for the purposes of section 17(d) and rule 17d-1.

2. Rule 17d-1 permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). 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. Applicants state that investments by the Participating Registered Funds in the Investment Funds will be on the same basis as other participants.

#### Applicants' Conditions

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

1. The shares of the Investment Funds that are sold to and redeemed from the Registered Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' Rules of Conduct).

2. If the Adviser to an Investment Fund collects a fee from the Investment Fund for acting as its investment adviser, and unless the fee payable to the Adviser for acting as the adviser of the Registered Fund is reduced by the amount of such other fee paid with respect to the investment of the Registered Fund's Uninvested Cash, before the next meeting of the board of trustees of a Registered Fund ("Board") that invests in the Investment Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser to the Registered Fund will provide the board with specific information regarding the approximate cost to the Adviser for managing the Uninvested Cash that can be expected to be invested in such Investment Fund. Before approving any advisory contract under section 15, the Board, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Registered Fund by the Adviser should be reduced to account for the fee indirectly paid by the Registered Fund because of the advisory fee paid by the Investment Fund, to the extent that the latter fee is not credited against the advisory fee payable by the Registered Fund. The minute books of the Registered Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Participating Fund, each Investment Fund, and any future fund that may rely on the order shall be advised by or, in the case of a 3(c)(11) Entity, shall have as its trustee, FMR or a person controlling, controlled by, or under common control with FMR.

4. Investment in shares of the Investment Funds will be in accordance with each Registered Fund's respective investment restrictions and will be consistent with each Registered Fund's policies as set forth in its prospectus and statement of additional information.

5. No Investment Fund in which a Registered Fund invests shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except as permitted by a Commission order concerning an interfund lending and borrowing facility.

6. Each of the Registered Funds will invest Uninvested Cash in, and hold shares of, the Investment Funds only to the extent that a Registered Fund's aggregate investment of Uninvested Cash in the Investment Funds at the time the investment is made does not exceed 25% of the Registered Fund's total net assets. For purposes of this limitation, each Registered Fund or series thereof will be treated as a separate investment company.

7. To engage in Interfund Transactions, the Participating Funds will comply with rule 17a-7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers, and/or common directors.

8. A Registered Fund that is a money market fund will not invest its Uninvested Cash or Cash Collateral in an Investment Fund that does not comply with the requirements of rule 2a-7 under the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 26, 1999.

An open meeting will be held on Tuesday, July 27, 1999, at 10 a.m. A closed meeting will be held on Wednesday, July 28, 1999 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters will be present.