

affiliated person of the Fund, EIM, First Union, or an affiliated person of any such person.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 99-27444 Filed 10-20-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24085; 812-11776]

GW Capital Management, LLC, et al.; Notice of Application

October 15, 1999.

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

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

SUMMARY OF APPLICATION: Applicants request an order that would permit them to implement a "fund of funds" arrangement. The fund of funds would invest in other funds that are part of the same group of investment companies and in funds that are not part of the same group of investment companies in reliance on section 12(d)(1)(F) of the Act.

APPLICANTS: GW Capital Management, LLC ("Adviser"), Maxim Series Fund, Inc. ("Fund"), Orchard Series Fund ("Trust"), and One Orchard Equities, Inc. ("Distributor").

FILING DATES: The application was filed on September 16, 1999. Applicant 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 November 9, 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609; Applicants, c/o Beverly A. Byrne, Esq., Maxim Series Fund, Inc., 8505 East Orchard Road, Englewood, CO 80111.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942-0574 or Michael W. Mundt, 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. 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. The Fund is organized as a Maryland corporation and the Trust is organized as a Delaware business trust. The Fund and the Trust are registered under the Act as open-end management investment companies and are part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act). The Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Fund and the Trust.

2. Applicants request relief to permit the series of the Fund and any other registered open-end management investment company that is part of the same "group of investment companies" as the Fund (collectively, the "Profile Portfolios") to purchase shares of series of the Fund, series of the Trust, and other registered open-end management investment companies or series that are part of the same "group of investment companies" as the Profile Portfolios (collectively, the "Underlying Portfolios").¹ The Profile Portfolios also would invest in other registered open-end management investment companies that are not part of the same "group of investment companies" as the Profile

¹ Applicants request relief for each existing or future registered open-end management investment company or series of such company that is part of the same "group of investment companies" as the Fund, and (1) is, or will be, advised by the Adviser or by any entity controlling, controlled by, or under common control with the Adviser; or (2) for which the Distributor or any entity controlling, controlled by, or under common control with the Distributor serves as principal underwriter. Each existing registered open-end management investment company that currently intends to rely on the order is named as an applicant. Any registered open-end management investment company that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

Portfolios (the "Other Portfolios") in reliance on section 12(d)(1)(F) of the Act.

3. Shares of the Profile Portfolios are offered to separate accounts of Great-West Life & Annuity Insurance Company and its affiliates and separate accounts of unaffiliated insurers for the purpose of funding variable contracts issued by those insurance companies. Shares may also be offered directly to qualified pension and retirement plans. The Profile Portfolios do not impose any front-end sales charges, contingent deferred sales charges, or rule 12b-1 fees. Applicants state that the Profile Portfolios are intended as an efficient and cost-effective method of allowing investors who are pursuing long-term investment goals, namely, owners of variable insurance contracts and qualified plan participants, to structure a comprehensive asset allocation program with investments in the Underlying Portfolios and Other Portfolios consistent with the investors' investment time horizon.

Applicants' Legal Analysis

Section 12(d)(1) of the Act

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 any other acquired companies, represent more than 10% of the acquiring company's 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 investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted

pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G). Section 12(d)(1)(G)(ii) defines the term "group of investment companies" to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Profile Portfolios will invest in shares of the Other Portfolios, they cannot rely on the exemption from sections 12(d)(1)(A) and (B) afforded by section 12(d)(1)(G).

3. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

4. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

5. Applicants request relief under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to permit the Profile Portfolios to invest in the Underlying Portfolios. Applicants are not requesting relief from section 12(d)(1)(F) and will rely on that section for investments in Other Portfolios.

6. Applicants state that the Profile Portfolios' investments in the Underlying Portfolios do not raise the concerns that sections 12(d)(1)(A) and (B) were designed to address, which include undue influence, duplicative fees, and overly complex fund arrangements. Because the Profile Portfolios and Underlying Portfolios are part of the same group of investment companies, applicants submit that there is little potential for the Adviser to

exercise inappropriate control over the Underlying Portfolios. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of advisory fees, sales charges, and other fees. Applicants state that the arrangements would not become overly complex because Underlying Portfolios and Other Portfolios generally will not invest in other investment companies in excess of the limits of section 12(d)(1)(A).

Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Profile Portfolios and the Underlying Portfolios will be advised by the Adviser. As a result, applicants submit that a Profile Portfolio and Underlying Portfolio may be deemed to be affiliated persons by virtue of being under the common control of the Adviser, or to the extent that a Profile Portfolio owns 5% or more of the shares of an Underlying Portfolio. Applicants state that purchases and redemptions of shares of the Underlying Portfolios by the Profile Portfolios could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 17(b) provides that the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt persons or transactions 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 policy and provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) of the Act to permit the Profile Portfolios to purchase and redeem shares of the Underlying Portfolios.

4. Applicants state that the terms of the proposed transactions will be fair and reasonable and will not involve overreaching because shares of Underlying Portfolios will be sold and redeemed at their net asset values. Applicants also state that the investment by the Profile Portfolios in the Underlying Portfolios will be effected in accordance with the investment restrictions of the Profile Portfolios and will be consistent with the policies as set forth in the registration statement of the Profile Portfolios.

Applicant's Conditions

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

1. All Underlying Portfolios will be part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Profile Portfolios.

2. No Underlying Portfolio or Other Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio or Other Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Portfolio or Other Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

3. Any sales charges, distribution-related fees and service fees relating to the shares of the Profile Portfolios, when aggregated with any sales charges, distribution-related fees and service fees paid by the Profile Portfolios relating to the acquisition, holding or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers.

4. Before approving any advisory contract under section 15 of the Act, the board of directors of the Profile Portfolios, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Profile Portfolios.

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

Jonathan G. Katz,
Secretary.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3216]

State of New York; (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency, effective September 18, 1999, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on September 16, 1999 and continuing through September 18, 1999.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 1999 and for economic injury the deadline is June 19, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 8, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99-27476 Filed 10-20-99; 8:45 am]
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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3212]

State of North Carolina (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency dated October 4, 1999, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on September 15, 1999 and continuing through October 4, 1999.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 14, 1999, and for economic injury the deadline is June 16, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 8, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99-27475 Filed 10-20-99; 8:45 am]
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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3218]

State of South Carolina (Amendment #2)

In accordance with notices received from the Federal Emergency Management Agency dated September 30 and October 6, 1999, the above-numbered Declaration is hereby amended to include Dillon, Dorchester, Florence, and Orangeburg Counties in the State of South Carolina as a disaster area due to damages caused by Hurricane Floyd. This declaration is further amended to establish the incident period for this disaster as beginning on September 14, 1999 and continuing through September 30, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Aiken, Barnwell, Calhoun, Darlington, Lee, Lexington, Marlboro, and Sumter in the State of South Carolina may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 19, 1999 and for economic injury the deadline is June 21, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 8, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99-27477 Filed 10-20-99; 8:45 am]
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SMALL BUSINESS ADMINISTRATION

Georgia District Advisory Council; Public Meeting

The U.S. Small Business Administration, Georgia District Office,

Advisory Council will hold a public meeting on Friday, November 5, 1999 at 8:30 a.m. at the Sheraton Augusta Hotel, 2651 Perimeter Parkway, Augusta, Georgia 30909, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Charles E. Anderson, District Director, U.S. Small Business Administration, 1720 Peachtree Road, N.E., Suite 600, Atlanta, Georgia 30309, (404) 347-3012.

Bettie Baca,

Counselor to the Administrator.

[FR Doc. 99-27478 Filed 10-20-99; 8:45 am]
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SMALL BUSINESS ADMINISTRATION

Oregon Advisory Council; Public Meeting

The U.S. Small Business Administration Oregon Advisory Council, located in the geographical area of Portland, Oregon will hold a public meeting from 8:00 a.m. to 2:00 p.m. Tuesday, October 26, 1999 at 6th Floor Conference Room, 1515 Bldg., 1515 SW Fifth Avenue, Portland, Oregon to discuss such matters as may be presented by members, SBA staff or others present.

For further information, write or call Donald S. Matsuda, Deputy District Director, U.S. Small Business Administration, 1515 SW Fifth Avenue, Suite 1050, Portland, OR 97201-5494, telephone number (503) 326-5221.

Bettie Baca,

Counselor to the Administrator.

[FR Doc. 99-27479 Filed 10-20-99; 8:45 am]
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SMALL BUSINESS ADMINISTRATION

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Wisconsin State Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12 p.m. to 1 p.m., October 21, 1999 at Metro Milwaukee Area Chamber (MMAC) Association of Commerce Building; 756 North Milwaukee Street, Fourth Floor, Milwaukee, Wisconsin to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Yolanda Lassiter, U.S. Small Business