

Act, or from any rule thereunder, 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. For the reasons stated above, applicants believe that the requested relief satisfies this standard.

#### Applicants' Condition

Applicants agree that the order granting the requested relief with respect to the Funds' common stock shall terminate with respect to a Fund upon the effective date of a registration statement under the Securities Act of 1933, as amended, for any future public offering of common stock of the Fund after the date of the requested order and after the Fund's initial public offering other than:

(i) A rights offering to shareholders of such Fund, provided that (a) shares are issued only within the 15-day period immediately following the record date of a monthly dividend, or within the six-week period following the record date of a quarterly dividend; (b) the prospectus for such rights offering makes it clear that common shareholders exercising rights will not be entitled to receive such dividend with respect to shares issued pursuant to such rights offering; and (c) such Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization; unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25069; 812-12522]

### The Pillar Funds, et al.; Notice of Application

July 20, 2001.

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

**ACTION:** Notice of an application for an order under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

**SUMMARY:** Applicants request an order to permit certain series of The Galaxy Fund ("Galaxy") and Galaxy Fund II ("Galaxy II") to acquire substantially all of the assets and liabilities of certain series of The Pillar Funds ("Pillar") (the "Reorganization"). Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

**Applicants:** Galaxy, Galaxy II, Pillar and Fleet Investment Advisors Inc. ("Fleet").

**Filing Dates:** The application was filed on May 18, 2001. 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 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 August 14, 2001, 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. Galaxy and Galaxy II, 4400 Computer Drive, Westborough, MA 01581-5108. Pillar, 101 Federal Street, Boston, MA 02110. Fleet, 100 Federal Street, Boston, MA 02110.

**FOR FURTHER INFORMATION CONTACT:** Stacy L. Fuller, Staff Attorney, at 202-942-0553, or Mary Kay Frech, 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 SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone 202-942-8090).

#### Applicants' Representations

1. Pillar, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is comprised of 17 series, 16 of which will participate in the Reorganization (the "Acquired Funds").<sup>1</sup>

<sup>1</sup> The Acquired Funds are (1) Pillar U.S. Treasury Securities Money Market Fund, (2) Pillar U.S.

2. Galaxy, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Galaxy currently offers 37 series, 12 of which will participate in the Reorganization (the "Operating Galaxy Funds").<sup>2</sup> Galaxy is also organizing three new shell series, each of which will participate in the reorganization (the "Shell Acquiring Funds" and together with the Operating Galaxy Funds, the "Galaxy Funds").<sup>3</sup>

3. Galaxy II, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Galaxy II currently offers five series, one of which, the Galaxy II Large Company Index Fund, will participate in the Reorganization (together with the Operating Galaxy Funds, the "Operating Acquiring Funds"). The Operating Acquiring Funds and the Shell Acquiring funds are referred to collectively as the "Acquiring Funds." Each of the Acquiring funds and each of the Acquired Funds are referred to individually as a "fund" and collectively as the "funds." Applicants state that the investment objectives, policies and restrictions of each Acquired Fund are substantially similar to those of the corresponding Acquiring Fund.

4. Fleet, a subsidiary of FleetBoston Financial Corporation ("FleetBoston"), is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Fleet serves as investment adviser to the Operating Acquiring Funds and the Acquired

Treasury Securities Plus Money Market Fund, (3) Pillar Prime Obligation Money Market Fund, (4) Pillar Institutional Select Money Market Fund, (5) Pillar Tax-Exempt Money Market Fund, (6) Pillar Intermediate-Term Government Securities Fund, (7) Pillar Fixed Income Fund, (8) Pillar New Jersey Municipal Securities Fund, (9) Pillar Balanced Fund, (10) Pillar Equity Income Fund, (11) Pillar Mid Cap Fund and (12) Pillar International Equity Fund, (13) Pillar Pennsylvania Municipal Securities Fund, (14) Pillar Equity Value Fund, (15) Pillar Equity Growth Fund and (16) Pillar Equity Index Fund. The one remaining series Pillar High Yield Bond Fund will liquidate and dissolve in early August 2001.

<sup>2</sup> The Operating Galaxy Funds are (1) Galaxy U.S. Treasury Money Market Fund, (2) Galaxy Institutional Treasury Money Market Fund, (3) Galaxy Money Market Fund, (4) Galaxy Institutional Money Market Fund, (5) Galaxy Tax-Exempt Money Market Fund, (6) Galaxy Intermediate Government Income Fund, (7) Galaxy High Quality Bond Fund, (8) Galaxy New Jersey Municipal bond Fund, (9) Galaxy Asset Allocation Fund, (10) Galaxy Equity Income Fund, (11) Galaxy Growth Fund II and (12) Galaxy International Equity Fund.

<sup>3</sup> The Shell Acquiring Funds are (1) Galaxy Pennsylvania Municipal Bond Fund, (2) Galaxy Large Cap Value Fund and (3) Galaxy Large Cap Growth Fund. The registration statement for the shares of the Shell Acquiring Funds was filed with the Commission on May 18, 2001, and it is anticipated that it will be declared effective on or about August 1, 2001.

Funds, and will serve as investment adviser to the Shell Acquiring Funds Following the Reorganization.

5. Currently, Fleet and certain of its affiliates that are under common control with FleetBoston (collectively, the "Fleet Boston Group") hold of record, in their names or in the names of their nominees more than 5% (and in some cases more than 25%) of the outstanding voting securities of certain of the Acquired Funds and certain of the Operating Acquiring Funds. All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity, except that certain companies in the Fleet Boston Group may, at times, own economic interests in certain of the Funds that are money market funds for their own account. Some of these securities are held for the benefit of employee benefit plans for employees of FleetBoston and its affiliates.

6. On April 2, 2001, the board of trustees of Galaxy II (the "Galaxy II Board"), including the trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("Disinterested Trustees"), unanimously approved a plan of Reorganization for the Pillar Equity Index fund and the Galaxy II Large Company Index Fund. On March 1, 2001, the board of trustees of Galaxy (the "Galaxy Board"), including the Disinterested Trustees, unanimously approved a plan of Reorganization for the remainder of the Acquired funds and the Galaxy Funds. The board of trustees of the Acquired Funds (The "Acquired Funds' Board"), including the Disinterested Trustees, unanimously approved plans of Reorganization for the Pillar Equity Index Fund and the Galaxy II Large Company Index fund on April 6, 2001, and for the remainder of the Acquired Funds and the Galaxy Funds on March 9, 2001. Pursuant to the plans of Reorganization (each a "Plan of Reorganization" and together, the "Plans of Reorganization"), substantially all of the assets and liabilities of each of the Acquired Funds will be transferred to the corresponding Acquired Fund in exchange for shares of designated classes of the corresponding Acquired Fund.<sup>4</sup> Each Acquired Fund

will distribute the Acquired Fund shares received in the Reorganization to its shareholders.

7. The number of Acquiring Funds shares to be issued to shareholders of an Acquired Fund will be determined by dividing the aggregate net assets of the Acquired Fund by the net asset value per corresponding class of shares of the corresponding Acquired Fund, each computed as of the close of business immediately prior to the effective time of the Reorganization (the "Effective Time"). The assets of each Acquired Fund and each Acquiring Fund will be valued in accordance with their respective valuation procedures as set forth in their respective then-current prospectuses and statements of additional information. Acquiring Fund shares will be distributed pro rata to the shareholders of record of the corresponding class of the Acquired Fund, determined as of the Effective Time. This distribution will be accomplished by an instruction, signed by an appropriate officer of each Acquired Fund, to transfer the Acquiring Fund shares, which are credited to the Acquired Fund's account on the books of the Acquiring Fund, to open accounts on the books of the Acquiring Fund, which accounts are established and maintained by the Acquiring Fund's transfer agent in the names of record of the Acquired Fund shareholders. The Acquiring Fund shares transferred represent the respective number of shares of the Acquiring Fund due Acquired Fund shareholders. Simultaneously, all issued and outstanding shares of the Acquired Funds will be canceled on the books of each Acquired Fund. Each of the Acquired Funds thereafter will be dissolved.

8. The Reorganization is expected to occur on or about August 17, 2001. Each Plan of Reorganization may be terminated by mutual consent of both parties any time prior to the Effective Time, or by one party if, prior to the Effective Time, certain conditions are not met and a majority of the party's board of trustees votes to terminate the Plan of Reorganization.

9. The Reorganization will involve three classes of share offered by the Acquired Funds (Class A Shares), Class B Shares and Class I Shares,<sup>5</sup> five classes of shares offered by Galaxy (Class I Shares, Class III Shares, Trust Shares, Retail A Shares and Retail B

Shares),<sup>6</sup> offered by Galaxy II. As a result of the Reorganization, holders of the Pillar Treasury Securities Plus Money Market Fund and the Pillar Institutional Select Money Market Fund will receive, respectively, Class III Shares and Class I Shares of the corresponding Acquiring Funds. Holders of Class A Shares and Class I Shares of the Pillar Pennsylvania Municipal Securities Fund will receive Trust Shares of the Acquiring Fund. Holders of the Pillar Equity Index Fund will receive Shares of the Galaxy II Large Company Index Fund. With respect to the remainder of the Acquired Funds, holders of Class A Shares will receive Retail A Shares of the corresponding Acquiring Fund, holders of Class B Shares of the corresponding Acquiring Fund and holders of Class I Shares will receive Trust Shares of the corresponding Acquiring Fund. Applicants state that the rights and obligations of the shares of the Acquired Funds are substantially similar to those of the corresponding classes of shares of the Acquiring Funds to be issued in the Reorganization.

10. No sales charges will be imposed in connection with the Reorganization. For purposes of calculating any contingent deferred sales charge ("CDSC"), holders of Class A Shares or Class B Shares of an Acquired Fund will be deemed to have held the Retail A Shares or Retail B Shares of the Acquiring Fund received in the Reorganization since the date such shareholder initially purchased the shares of the Acquired Fund and will incur CDSCs based on the CDSC schedule of the Acquired Fund.

11. The Acquired Funds' Board and the Galaxy Board and the Galaxy II Board (the Galaxy Board and the Galaxy II Board together, the "Acquiring Funds' Boards"), including all of the Disinterested Trustees of each board of trustees, found that participation in the Reorganization was in the best interest of, respectively, each of the Acquired Funds and each of the Acquiring Funds, and that the interests of existing shareholders in those Funds would not be diluted as a result of the Reorganization. In approving the Reorganization, the Acquired Funds' Board and the Acquiring Funds' Boards considered, among other things, the following: (a) The expected cost savings for certain of the Acquired Funds; (b) the increase in the number of portfolio options available to shareholders of the

<sup>4</sup> Each of the Acquired Funds is listed in footnote 1, *supra*, and its corresponding Acquired Funds is listed with the same number in footnote 2, *supra*. The four other Acquired Funds and their corresponding Acquired Funds are as follows: (1) Pillar Pennsylvania Municipal securities Fund and Galaxy Pennsylvania Municipal Bond Fund, (2) Pillar Equity Value Fund and Galaxy Large Cap Value Fund, (3) Pillar Equity growth Fund and Galaxy Large Cap Growth Fund and (4) Pillar Equity Index Fund and Galaxy II Large Company Index Fund.

<sup>5</sup> The Pillar Prime Obligation Money Market Fund offers a fourth class of shares, Class S shares, which will be liquidated prior to the Reorganization.

<sup>6</sup> Certain of the Galaxy Funds are authorized to issue other classes of shares (Prime A Shares, Prime B Shares, BKB Shares and Class II Shares) not involved in the Reorganization.

Acquired Funds after the Reorganization; (c) the well-developed distribution network and shareholder servicing arrangements of the Acquiring Funds; (d) the capabilities, practices and resources of Fleet and other service providers to the Acquiring Funds; (e) the investment advisory and other fees projected to be paid by the Acquiring Funds and the projected expense ratios of the Acquiring Funds as compared with those of the Acquired Funds; (f) the investment objectives, policies and limitations of the Acquired Funds and their compatibility with those of the corresponding Acquiring Funds; (g) the terms and conditions of the Plan(s) of Reorganization; (h) the anticipated tax-free status of the Reorganization; (i) the past performance of the Acquired Funds and the Acquiring Funds and the strength of the Galaxy brand; and (j) the larger asset base of Galaxy.

12. Pillar will assume all expenses incurred by the Funds in connection with the reorganization, except that Fleet or one of its affiliates will bear the following expenses: (a) expenses allocated to the Pillar Institutional Select Money Market Fund, Pillar Balanced Fund, Pillar Equity Index Fund, Pillar Equity Value Fund, Pillar Equity Growth Fund and Pillar MidCap Fund; and (b) expenses allocated to the Pillar U.S. Treasury Securities Money Market Fund, Pillar U.S. Treasury Securities Plus Money Market Fund, Pillar Prime Obligation Money Market Fund and Pillar Tax-Exempt Money Market Fund, but only to the extent such expenses result in a decrease in per share net asset value of a Fund.

13. The Reorganization is subject to a number of conditions precedent, as set forth in each Plan of Reorganization, including that: (a) A registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; (b) the shareholders of the Acquired Funds will have approved the Plans of Reorganization; (c) each Acquired Fund that is not reorganizing into a Shell Acquiring Fund will have declared a dividend or dividends to distribute substantially all of its investment company taxable income and net capital gain to its shareholders; (d) applicants will have received exemptive relief from the Commission with respect to the issues in the application; and (e) the applicants will have received an opinion of counsel concerning the federal income tax aspects of the Reorganization. Applicants agree not to make any material changes to a Plan of Reorganization without prior Commission approval.

14. The N-14 registration statement for Galaxy was filed with the Commission on April 2, 2001, and became effective on May 16, 2001. The N-14 registration statement for Galaxy II was filed with the Commission on April 11, 2001, and became effective on May 22, 2001. The prospectus/proxy statement contained in the N-14 registration statements of Galaxy and Galaxy II was mailed to shareholders of the corresponding Acquired Funds on or about May 17, 2001. A special meeting of the Acquired Fund shareholders was held on July 19, 2001 and the Plan of Reorganization was approved.

#### Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding 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 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 Acquiring Funds and the Acquired Funds may be deemed to be affiliated persons and thus the Reorganization may be prohibited by section 17(a) of the Act.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants may not be able to rely on rule 17a-8 in connection with the Reorganization because the Acquiring Funds and the Acquired Funds may be deemed to be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by members of the Fleet Boston Group of more than 5% (and in some cases, more than 25%) of the outstanding voting

securities of certain of the Acquired Funds and certain of the Operating Acquiring Funds, each Acquired Fund may be deemed an affiliated person of an affiliated person of the corresponding Acquiring Fund. In addition, where a Fleet Boston Group member's ownership exceeds 25%, the Acquired Funds and the Operating Acquiring Funds may be deemed to be under common control and thus affiliated persons under section 2(a)(3) of the Act.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the Acquired Funds' Board and the Acquiring Funds' Boards, including all of the Disinterested Trustees, found that participation in the Reorganization is in the best interests of each of the Funds, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. Applicants also note that the exchange of the Acquired Funds' assets for shares of the Acquiring Funds will be based on the Funds' relative net asset values.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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