

that attributable to other E.ON subsidiaries; and

(7) A statement of revenues and net income of each of E.ON's EWGs and FUCOs for the twelve months ended as of the end of that semiannual period, with an indication of which EWGs and FUCOs were acquired during the reporting period.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-32074 Filed 12-28-01; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25324; 813-202]

### Greenwich Street Employees Fund, L.P., et al.; Notice of Application

December 21, 2001.

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

**ACTION:** Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 ("Act") exempting applicants from all provisions of the Act and the rules and regulations under the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (except for certain provisions of paragraphs (a), (b), (e), and (h)), and section 36 through 53, and the rules and regulations under those sections.

**SUMMARY OF APPLICATION:** Applicants request an order to exempt certain limited partnerships and other entities (each a "Partnership") formed for the benefit of key employees of Citigroup Inc. and its affiliates from certain provisions of the Act. Each Partnership will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act.

*Applicants:* Greenwich Street Employees Fund, LP ("Initial Partnership"); Citigroup Inc.; Citigroup Employee Fund of Funds I, LP; Citigroup Employee Fund of Funds (US-UK) I, LP; Citigroup Employee Fund of Funds (Cayman) I, LP; Citigroup Employee Fund of Funds (DE-UK) I, LP; SSB Capital Partners I, LP; SSB Capital Partners (US-UK) I, LP; SSB Capital Partners (Cayman) I, LP; and SSB Capital Partners (DE-UK) I, LP.

**FILING DATES:** The application was filed on February 10, 1999 and amended on August 18, 1999, October 31, 2000, April 16, 2001 and December 20, 2001.

*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 January 15, 2002, 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, NW., Washington, DC 20549-0609. Applicants, 399 Park Avenue, New York, New York 10043.

**FOR FURTHER INFORMATION CONTACT:** John L. Sullivan, Senior Counsel, at (202) 942-0681, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

### Applicants' Representations

1. Citigroup Inc. is a financial holding company whose businesses provide a broad range of financial services. Citigroup Inc. and its affiliates (as defined under rule 12b-2 under the Securities Exchange Act of 1934 ("Exchange Act")) ("Citigroup") have organized and will organize Partnerships primarily for the benefit of eligible current and former employees, officers, directors, and persons on retainer of Citigroup (an "Eligible Employee"). The Partnerships are part of a program designed to create capital building opportunities that are competitive with those at other financial services firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership is voluntary.

2. A Partnership will be a limited partnership, a limited liability company, business trust or other entity organized under the laws of Delaware or another state. Citigroup also will form Partnerships organized under the laws of jurisdictions outside the United States to create the same investment

opportunities for Eligible Employees who are not U.S. residents. The Partnerships will be operated in accordance with their respective limited partnership agreements or other organizational documents (each, a "Partnership Agreement"). Each Partnership will be formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act and will operate as a closed-end management investment company, which may be diversified or non-diversified.

3. Each Partnership will be managed, operated and controlled by its general partner, managing member or other similar entity ("General Partner"). Each General Partner, with the exception of the Initial General Partner (as defined below), will be a Citigroup entity. The General Partner or another entity will serve as investment adviser ("Investment Adviser") to a Partnership. The Investment Adviser will be (a) registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"), (b) exempt from Advisers Act registration requirements by virtue of section 203(b)(3) of the Advisers Act, or (c) excluded from the definition of investment adviser under the Advisers Act because it is a bank or a bank holding company (as defined in the Bank Holding Company Act of 1956). Any entity serving as Investment Adviser to any Partnership (other than the Initial Partnership as described below) will be a Citigroup entity.

4. The Initial Partnership is a limited partnership that first offered Interests (as defined below) in February 1999. The Initial Partnership invests concurrently with Greenwich Street Capital Partners II, LP ("Fund II") and other investors organized or managed by Citigroup or its designees that generally co-invest with Fund II ("Fund II Co-Investors"). Pursuant to their respective limited partnership agreements, the Initial Partnership, Fund II and Fund II Co-Investors must each, to the extent possible, make investments in securities of portfolio companies on a *pari passu* basis with each other on the same terms and at the same times and dispose of such securities at the same time, on the terms and conditions no more favorable than the terms and conditions of any other such disposition by any other such party. Both the Initial Partnership and Fund II are advised by GSCP (NJ), LP ("Initial Investment Adviser"). The Initial Investment Adviser is wholly owned by individuals who are managing members of Greenwich Street Investments II, L.L.C., which is the general partner of the Initial Partnership ("Initial General Partner") and the

general partner of Fund II. At the time the Initial Partnership was formed, the Initial General Partner was a Citigroup entity. In June 1999, Citigroup restructured its interest in the Initial General Partner as a condition to an order of the Federal Reserve Board prompted by the merger of Citicorp and Travelers Group Inc. The restructuring involved (a) a reduction in the voting interest of The Travelers Insurance Company ("Travelers Insurance") and certain of its affiliates in the Initial General Partner to 24.9%, (b) Travelers Insurance ceasing to be a managing member of the Initial General Partner, and (c) the management and employees of the Initial Investment Adviser ceasing to be employed by Citigroup. When the restructuring occurred, 42.5% of the Initial Partnership's capital had been invested or committed for investment. Citigroup continues to own a 50% economic interest in the equity of the Initial General Partner.

5. Interests in the Partnerships ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act"), Regulation D or Regulation S under the Securities Act, and will be sold only to Eligible Employees, and other "Qualified Participants," each as defined below, (collectively, the "Limited Partners"). Prior to offering Interests to an Eligible Employee or Eligible Family Member (as defined below), the General Partner must reasonably believe that such individual has such knowledge, sophistication and experience in business and financial matters to be capable of evaluating the merits and risks of participating in the Partnership, is able to bear the economic risk of such investment, and is able to afford a complete loss of such investment. Each Eligible Employee will meet the standards of an "accredited investor" as defined in rule 501(a)(5) or 501(a)(6) of Regulation D under the Securities Act (an "Accredited Investor") or be one of 35 or fewer employees of Citigroup who meets certain other requirements ("Other Investors").

6. Each Other Investor will be an Eligible Employee who (a) is a "knowledgeable employee," as defined in rule 3c-5 under the Act, of the Partnership (with the Partnership treated as though it were a "Covered Company" for purposes of the rule), or (b) has a graduate degree in business, law or accounting, has a minimum of five years of consulting, investment banking, legal or similar business experience, and has a reportable income from all sources in each of the two calendar years immediately preceding

the Other Investor's participation in the Partnership of at least \$100,000 and has a reasonable expectation of reportable income of at least \$140,000 per year in each year in which the Other Investor will be committed to make investments in a Partnership. An Other Investor qualifying under (b) above will not be permitted to invest in any year more than 10% of such person's income from all sources for the immediately preceding year in the aggregate in a Partnership and in all other Partnerships in which that Other Investor has previously invested.

7. A Qualified Participant is an Eligible Employee, Eligible Family Member, Eligible Investment Vehicle, or Citigroup. An "Eligible Family Member" is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee, and must be an Accredited Investor. An "Eligible Investment Vehicle" is a trust or other investment vehicle established solely for the benefit of an Eligible Employee or Eligible Family Members. An Eligible Investment Vehicle must be either (a) an Accredited Investor or (b) an entity for which an Eligible Employee or Eligible Family Member (each, an "Eligible Individual") is a settlor and principal investment decision-maker.<sup>1</sup> Any member of Citigroup that acquires an Interest will be an Accredited Investor.

8. The specific investment objectives and strategies for a particular Partnership will be set forth in a private placement memorandum relating to the Interests offered by the Partnership, and each Qualified Participant will receive a copy of the private placement memorandum before making an investment in the Partnership. The terms of a Partnership will be disclosed to each Eligible Employee at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to the Limited Partners as soon as practicable after the end of its fiscal year. In addition, a report will be sent to each Limited Partner setting forth the information with respect to his or her share of income, gains, losses, credits and other items for federal income tax purposes, resulting from the operation of the Partnership during that year.

<sup>1</sup> A limited number of Eligible Employees who were Accredited Investors invested in the Initial Partnership through estate planning vehicles that may or may not have been Accredited Investors. There were significantly fewer than 35 such vehicles investing in the Initial Partnership, all of which were established for the exclusive benefit of Eligible Individuals.

9. Interests in a Partnership will be non-transferable except with the express consent of the General Partner. No person will be admitted into a Partnership unless the person is a Qualified Participant. No fee of any kind will be charged in connection with the sale of Interests.

10. The General Partner may have the right, but not the obligation, to repurchase or cancel the Interest of an Eligible Employee who ceases to be an employee, officer, director or current consultant of any member of Citigroup for any reason.

11. A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. An Investment Adviser may be paid a management fee for its services to a particular Partnership, which may be determined as a percentage of aggregate commitments. In addition, a General Partner may be entitled to a performance-based fee or "carried interest."<sup>2</sup> If the General Partner is registered as an investment adviser under the Advisers Act, any carried interest will be charged only if permitted by rule 205-3 under the Advisers Act. Except for the Initial Partnership, if the General Partner is not registered under the Advisers Act, the carried interest will comply with section 205(b)(3) of the Advisers Act (with the Partnership treated as though it were a business development company solely for the purpose of that section).<sup>3</sup> Certain of the Partnerships may not pay a management fee or a carried interest but will pay a fee for administrative services to a Citigroup entity.

13. A Partnership will not borrow from any person if the borrowing would

<sup>2</sup> A "carried interest" is an allocation to the General Partner based on the net gains in addition to the amount allocable to the General Partner that is in proportion to its capital contributions.

<sup>3</sup> The management fee and carried interest payable to the Initial Investment Adviser and Initial General Partner, respectively, by the Limited Partners in the Initial Partnership are on the same terms in all material respects as the management fee and carried interest payable to the investment adviser and general partner, respectively, of Fund II, as negotiated by Citigroup for its own account and by other institutional investors. In calculating the carried interest payable to the Initial General Partner, unrealized capital depreciation is taken into account as periodically determined by the Initial General Partner in its discretion. The Partnership Agreement for the Initial Partnership Agreement contains a "clawback" provision that requires the Initial General Partner to return to a Limited Partner any amount retained by the Initial General Partner and attributable to the Limited Partner that is in excess of 20% of distributions payable to that Limited Partner.

cause any person not named in section 2(a)(13) of the Act to own securities of the Partnership (other than short-term paper). If Citigroup makes loans to any Partnership, the lender will be entitled to receive interest at a rate that is permissible under applicable banking or tax regulations, provided that the rate will be no less favorable to the borrower than the rate obtainable on an arm's length basis. Any indebtedness of the Partnership will be the debt of the Partnership and without recourse to the Limited Partners.

14. Eligible Employees may be able to defer compensation under a deferred compensation plan established in connection with the Partnerships and receive a return on such deferred compensation determined by reference to the performance of a Partnership. The deferred compensation plans and/or an Eligible Employee's interest in such plans: (a) Will be subject to the applicable terms and conditions of the application;<sup>4</sup> (b) will only be offered to Eligible Employees who are current employees, officers, directors, or persons on retainer of Citigroup; (c) will have restrictions on transferability, including prohibitions on assignment or transfer except in the event of the Eligible Employee's death or as otherwise required by law; and (d) will provide information to participants equivalent to that provided to investors and prospective investors in the corresponding Partnership, including, without limitation, disclosure documents and audited financial information.

#### Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between

<sup>4</sup>For purposes of the application, a Partnership will be deemed to be formed with respect to each deferred compensation plan and each reference to "Partnership," "capital contribution," "General Partner," "Limited Partner," and "Interest" in the application will be deemed to refer to the deferred compensation plan, the notional capital contribution to the deferred compensation plan, Citigroup, a participant of the deferred compensation plan, and participation rights in the deferred compensation plan, respectively.

the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employees, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under section 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act and the rules and regulations under the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53 of the Act, and the rules and regulations under those sections.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) A Citigroup entity or a Third Party Fund (as defined below), or any affiliated person of such entity or Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by such Partnership; (b) a Partnership to invest in or engage in any transaction with any entity, acting as principal (i) in which the Partnership, any company controlled by the Partnership, or any Citigroup entity or Third Party Fund has invested or will invest or (ii) with which the Partnership, any company controlled by the Partnership, or any Citigroup entity or Third Party Fund is or will otherwise become affiliated; and (c) a Third Party Investor (as defined below), acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by such Partnership. The term "Third Party Fund" refers to an investment fund or separate account

that is organized for the benefit of investors who are not affiliated with Citigroup over which a Citigroup entity will exercise investment discretion. The term "Third Party Investor" refers to any person or entity that is not a Citigroup entity or affiliated with Citigroup and is a partner or other investor in a Third Party Fund.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Partnerships. Applicants state that the Limited Partners in each Partnership will be informed of the possible extent of the Partnership's dealings with Citigroup and of the potential conflicts of interest that may exist. Applicants also assert that the community of interest among the Limited Partners and Citigroup will serve to reduce any risk of abuse in transactions involving a Partnership and Citigroup or the respective affiliates of Citigroup. With respect to the Initial Partnership, applicants state that a sufficient community of interest exists between the Limited Partners of that Partnership and Citigroup, despite the fact that the Initial General Partner and Initial Investment Adviser are no longer Citigroup entities. The Initial Partnership operates according to terms that Citigroup negotiated with the Initial General Partner when the Initial General Partner was still a Citigroup entity. A significant amount of the Initial Partnership's committed capital was invested by the Initial General Partner while it was still a Citigroup entity, and all of the Partnership's investments are made in lockstep with Fund II, in which Citigroup is the largest investor.

5. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from participating in any joint enterprise, or other joint arrangement, with the company, unless approved by the Commission. Applicants request relief to permit affiliated persons of each Partnership, or affiliated persons of such persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with Citigroup or Citigroup's large capital resources and its experience in structuring complex transactions. Applicants also submit that the types of investment

opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of Eligible Employees as an incentive for them to remain with Citigroup and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with Citigroup are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of Citigroup enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by Citigroup will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent. Applicants state that the concern that permitting co-investments by Citigroup and a Partnership might lead to less advantageous treatment of the Partnership should be mitigated by the fact that Citigroup will be acutely concerned with its relationship with the investors in the Partnership and the fact that senior officers and directors of Citigroup entities will be investing in the Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Limited Partner, the General Partner or any other affiliated person of the Partnership (or any affiliate of the affiliated person) made a similar investment.

8. Co-investments with Third Party Funds, or by a Citigroup entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3 below. Applicants note that it is common for a Third Party Fund to require that Citigroup invest its own capital in Third Party Fund investments and that Citigroup investments be subject to substantially the same terms

as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnership. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to Citigroup. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by Citigroup in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships *vis-à-vis* a Third Party Fund.

9. Section 17(e) of the Act and rule 17e-1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a Citigroup entity (including the General Partner) acting as agent or broker, to receive placement fees, advisory fees or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation are deemed "usual and customary." Applicants state that for the purposes of the application, fees or other compensation that are charged or received by a Citigroup entity will be deemed "usual and customary" only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and unaffiliated third parties, including Third Party Funds. Applicants assert that, because Citigroup does not wish to appear to be favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a Citigroup entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e-1(b) requires that a majority of directors who are not

"interested persons" (as defined by section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Rule 17e-1(c) requires that a majority of the directors not be interested persons, that those directors select and nominate other disinterested directors and that any person who acts as legal counsel for the disinterested directors be an independent legal counsel. Applicants request an exemption from rule 17e-1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in paragraph (b) of the rule and without having to satisfy the standards set forth in paragraph (c) of the rule. Applicants state that because all of the directors of a General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e-1. Applicants state that each Partnership will comply with rule 17e-1(b) by having a majority of the board of directors of the General Partner take actions and make approvals as set forth in rule 17e-1. Applicants state that each Partnership will otherwise comply with rule 17e-1.

11. Section 17(f) of the Act provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with Commission rules. Rule 17f-1 under the Act specifies the requirements that must be satisfied when the custodian is a member of a national securities exchange. Rule 17f-2 under the Act specifies the requirements that must be satisfied for a registered management investment company to act as a custodian of its own investments.

Applicants request an exemption from section 17(f) and subsections (a), (b) (to the extent such subsection refers to contractual requirements) (c) and (d) of rule 17f-1 to the extent necessary to permit a Citigroup entity to act as custodian for a Partnership without a written contract. Additionally, applicants request an exemption from the rule 17f-1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest between a Partnership and Citigroup, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will otherwise comply with the provisions of rule 17f-1.

Applicants also request an exemption from rule 17f-2 to permit the following exceptions to the requirements of rule 17f-2: (a) A Partnership's investments may be kept in the locked files of the General Partner; (b) for purposes of paragraph (d) of the rule, (i) employees of the General Partner will be deemed to be employees of the Partnerships, (ii) officers or managers of the General Partner of a Partnership will be deemed to be officers of the Partnership and (iii) the General Partner of a Partnership or its board of directors will be deemed to be the board of directors of the Partnership and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the General Partner. Applicants expect that many of the Partnerships' investments will be evidenced only by partnership agreements, participation agreements or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants assert that these instruments are most suitably kept in the files of the General Partner, where they can be referred to as necessary.

12. Section 17(g) of the Act and rule 17g-1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g-1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. The rule also requires that a majority of the directors not be interested persons, that those directors select and nominate other disinterested directors and that any person who acts as legal counsel for the disinterested directors be an independent legal counsel. Applicants request exemptive relief to permit the General Partner's board of directors, who may be deemed interested persons, to take actions and make determinations as set forth in the rule. Applicants state that, because all directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g-1 without the requested relief. Specifically, each Partnership will comply with rule 17g-1 by having a majority of the General Partner's directors take actions and make determinations as are set forth in rule 17g-1. Applicants also state that each Partnership will otherwise comply with rule 17g-1.

13. Section 17(j) of the Act and paragraph (b) of rule 17j-1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of

a security held or to be acquired by a registered investment company. Rule 17j-1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicant requests an exemption from the provisions of rule 17j-1, except for the antifraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Limited Partners. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Limited Partners. Applicants also request an exemption from section 30(h) of the Act to the extent necessary to exempt the General Partner of each Partnership, members of the General Partner or any board of managers or directors or committee of Citigroup employees to whom the General Partner may delegate its functions, and any other persons who may be deemed to be members of an advisory board of a Partnership, from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

#### Applicants' Conditions

1. Each proposed transaction involving a Partnership otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d-1 under the Act to which a Partnership is a party (the "Section 17 Transactions") will be effected only if the General Partner determines that (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Limited Partners of the Partnership and do not involve overreaching of the Partnership or its Limited Partners on the part of any person concerned and (b) the transaction is consistent with the

interests of the Limited Partners, the Partnership's organizational documents and the Partnership's reports to its Limited Partners. In addition, the General Partner of the Partnership will record and preserve a description of all Section 17 Transactions, the General Partner's findings, the information or materials upon which the findings are based, and the basis therefore. All such records will be maintained for the life of the Partnership and at least two years thereafter and will be subject to examination by the Commission and its staff.<sup>5</sup> With respect to the Initial Partnership, the findings required by this condition will be made by Citigroup or a designated senior officer(s) of Citigroup. The records relating to these findings will be prepared and preserved by Citigroup in accordance with this condition and will be subject to examination by the Commission and its staff.

2. In connection with the Section 17 Transactions, the General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership or any affiliated person of such person, promoter or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which an "Affiliated Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, and where the investment transaction involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which the Partnership and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Affiliated Co-Investor. The term "Affiliated Co-Investor" with respect to any Partnership means any person who is (a)

<sup>5</sup> Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

an "affiliated person" (as such term is defined in the Act) of the Partnership (other than a Third Party Fund), (b) Citigroup, (c) an officer or director of Citigroup or (d) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor (a) to its direct or indirect wholly owned subsidiary, to any company (a "Parent") of which the Affiliated Co-Investor is a direct or indirect wholly owned subsidiary, or to a direct or indirect wholly owned subsidiary of its Parent, (b) to immediate family members of the Affiliated Co-Investor or a trust or other investment vehicle established for any Affiliated Co-Investor or any such family member or (c) when the investment comprises securities that are (i) listed on a national securities exchange registered under section 6 of the Exchange Act, (ii) national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2-1 thereunder, (iii) government securities as defined in section 2(a)(16) of the Act or other money market instruments or (iv) listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and its General Partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, such accounts, books and other documents constituting the record forming the basis for the audited financial statements that are to be provided to the Limited Partners in the Partnership, and each annual report of the Partnership required to be sent to the Limited Partners, and agree that all such records will be subject to examination by the Commission and its staff.<sup>6</sup>

5. The General Partner of each Partnership will send to each Limited Partner having an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent

accountants. At the end of each fiscal year, the General Partner will make or cause to be made a valuation of all of the assets of the Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, as soon as practicable after the end of each fiscal year of the Partnership, the General Partner will send a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Limited Partner of his, her or its federal and state income tax returns and a report of the investment activities of the Partnership during that fiscal year.

6. Whenever a Partnership makes a purchase from or sale to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a Citigroup director, officer or employee, such individual will not participate in the General Partner's determination of whether or not to effect such purchase or sale.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-32075 Filed 12-28-01; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25325; 812-12288]

### One Fund, Inc., Ohio National Fund, Inc., Dow Target Variable Fund LLC, and Ohio National Investments, Inc.; Notice of Application

December 21, 2001.

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

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

**SUMMARY OF APPLICATION:** Applicants, ONE Fund, Inc. ("ONE Fund") (each a "Fund" and, collectively, the "Funds"), and Ohio National Investments, Inc. (the "Adviser"), request an order that would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

**FILING DATES:** The application was filed on September 29, 2000, and amended on December 14, 2001.

*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 January 15, 2002, 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, NW., Washington, DC 20549-0609; Applicants, One Financial Way, Montgomery, Ohio 45242.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942-0574 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

### Applicants' Representations

1. ONE Fund and ON Fund are Maryland corporations registered under the Act as open-end management investment companies. ON Fund offers its shares only to separate accounts of The Ohio National Life Insurance Company ("ONLI") and Ohio National Life Assurance Corporation ("ONLAC"), as the underlying investments for variable annuities issued by ONLI and variable life insurance contracts issued by ONLAC. Dow Fund is an Ohio limited liability company registered under the act as an open-end management investment company. Dow Fund presently sells its interests only to separate accounts of ONLI as a funding option to support certain benefits under variable annuity contracts issued by ONLI. Each Fund is comprised of multiple series ("Portfolios"), each with its own investment objectives and policies.<sup>1</sup>

<sup>1</sup> Applicants also request relief with respect to all registered open-end investment companies and

<sup>6</sup> Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.