required to be preserved by brokers and dealers under rules adopted under section 17 to the extent the records are necessary or appropriate to record the entity's transactions with the fund.

5. Every investment adviser that is a majority-owned subsidiary of a fund must preserve the records required to be maintained by investment advisers under rules adopted under section 204 of the Investment Advisers Act of 1940 (''section 204'') for the periods specified in those rules.

6. Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 to the extent the records are necessary or appropriate to reflect the adviser's transactions with the fund.

The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, an investment company on (i) micrographic media, including microfilm, microfiche, or any similar medium, or (ii) electronic storage media, including any digital storage medium or system that meets the terms of this section. The investment company, or person that maintains and preserves records on its behalf, must arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.[6]

The Commission periodically inspects the operations of all funds to ensure their compliance with the provisions of the Act and the rules under the Act. The Commission staff spends a significant portion of their time in these inspections reviewing the information contained in the books and records required to be kept by rule 31a-1 and to be preserved by rule 31a-2.

There are approximately 4,500 active investment companies registered with the Commission as of April 30, 2002, all of which are required to comply with rule 31a-2. Based on conversations with representatives of the fund industry, the Commission staff estimates that each fund spends about 210 hours per year complying with rule 31a-2, for a total annual burden for the fund industry of approximately 945,000 hours.[7]

The Commission staff estimates the average cost of preserving books and records required by rule 31a-2, to be approximately $.000035 per $1.00 of net assets per year.[8] With the total net assets of all funds at about $7 trillion,[9] the staff estimates that compliance with rule 31a-2 costs the fund industry approximately $245 million per year.[10] The Commission staff estimates, however, based on past conversations with representatives of the fund industry, that funds could spend as much as half of this amount ($122.4 million) to preserve the books and records that are necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW Washington, DC 20549.

Dated: August 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22157 Filed 8–29–02; 8:45 am]

BILLING CODE 8010–01–P

[6] In addition, the fund, or whoever maintains the documents for the fund must provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the company may request: (A) a legible, true, and complete copy of the record in the medium and format in which it is stored; (B) a legible, true, and complete printout of the record; and (C) means to access, view, and print the records; and separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section. In the case of records retained on electronic storage media, the investment company, or person that maintains and preserves records on its behalf, must establish and maintain procedures: (i) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (ii) to limit access to the records to properly authorized personnel, the directors of the investment company, and the Commission (including its examiners and other representatives); and (iii) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

[7] Commission staff surveyed several fund representatives to determine the current burden hour estimate. The staff found that an average fund spends approximately 210 hours per annum complying with rule 31a-2 (210 hours x 4,500 registered investment companies = 945,000). Although the Commission did not change its collection of information requirements in rule 31a-2, the fund representatives' estimates reflect an annual increase of 182 hours per fund over the burden of 27.8 hours estimated in the 1998 PRA submission. The change in annual hours is based upon an increase in the estimated time each fund spends complying with the rule.

[8] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs for several funds and then relating this total cost to the average net assets of these funds during the year. The staff estimates that the annual cost of preserving records is $70,000 per fund; the funds queried in support of this analysis had an average asset base of approximately $2 billion (70,000/2 billion = .000035).

[9] *See* Investment Company Institute, 2002 Mutual Fund Fact Book, at 61.

[10] This estimate is based on the annual cost per dollar of net assets of the average fund as applied to the net assets of all funds ($7 trillion x .000035 = $244.7 million).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25717; 812–12174]

Reserve Private Equity Series, et al., Notice of Application

August 26, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

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

SUMMARY: The requested order would permit certain registered open-end investment companies to use uninvested cash to invest in affiliated money market funds, and the money market funds to sell shares to, and redeem shares from, the investment companies.

APPLICANTS: Reserve Private Equity Series (the ''Equity Fund''), The Reserve Fund, Reserve Tax-Exempt Trust, Reserve New York Tax-Exempt Trust, Reserve Municipal Money Market Trust (the ''Money Market Funds,'' together with the Equity Fund, the ''Trusts''), Reserve Management Company, Inc.

(the ''Adviser''), all existing and future series of the Trusts (''Funds'') and any other registered open-end management investment company and any series thereof (included in the term ''Funds'') that are now or in the future advised by the Adviser or a person controlling, controlled by or under common control with the Adviser.

FILING DATES: The application was filed on May 16, 2000, and amended on August 20, 2002.

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 September 18, 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 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: 1250 Broadway, 32nd Floor, New York, NY 10001–3701.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Royblat, 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 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representatives

1. The Equity Fund, a Delaware business trust, is an open-end management investment company registered under the Act and is comprised of seven Funds. The Money Market Funds, each a Massachusetts business trust, are open-end management investment companies registered under the Act. The Money Market Funds are subject to the requirements of rule 2a–7 under the Act. The Adviser, a New Jersey corporation, serves as investment manager to the Funds and is registered as an investment adviser under the Investment Advisers Act of 1940.[1]

2. Applicants state that certain Funds, including Money Market Funds (the ''Participating Funds'') have, or may be expected to have, cash balances that have not been invested in portfolio securities (''Uninvested Cash'') held by their custodian bank. Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, and new monies received from investors.

3. Applicants request an order to permit the Participating Funds to use their Uninvested Cash to purchase shares of one or more Money Market Funds that comply with rule 2a–7 under the Act (the ''Central Funds''), and each Central Fund to sell shares and purchase such shares from the Participating Funds and the Adviser to effect such purchases and sales (the ''Proposed Transactions''). Applicants believe that the Proposed Transactions will benefit the Participating Funds by providing higher rates of return, ready liquidity, and increased diversification and the Central Funds by increasing their asset base and providing an additional, stable market for their shares.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, 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, together with the securities of other acquired investment companies, 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)(J) of the Act provides that the Commission may exempt any person, security or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants requests relief under section 12(d)(1)(J) from the limitations of sections 12(d)(1)(A) and (B) to permit the Participating Funds to invest Uninvested Cash in the Central Funds.

3. Applicants submit that the Proposed Transactions do not implicate the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Central Fund will maintain a highly liquid portfolio, a Participating Fund would not be in a position to gain undue influence over a Central Fund through threat of redemption. Applicants represent that the Proposed Transactions will not result in an inappropriate layering of fees because shares of the Central Fund sold to the Participating Funds will not be subject to a sales load, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the Rules of Conduct of the National Association of Securities Dealers, Inc. (''NASD'')). In connection with approving any advisory contract, a Participating Fund's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), will consider to what extent, if any, the advisory fees charged to a Participating Fund by the Adviser should be reduced to account for any changes in services provided to a Participating Fund by the Adviser as a result of the Uninvested Cash being invested in the central Funds. Applicants state that no Central Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act. Applicants further state that if a Central Fund offers more than one class of shares, each Participating Fund will invest only in the class with the lowest expense ratio at the time of the investment.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of the affiliated person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or

[1] All existing investment companies that currently intend to rely on the requested order are named as applicants. Any other existing or future registered open-end management investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to the investment company. Applicants state that because the Funds share a common investment adviser, each of the Funds may be deemed to be under common control and affiliated persons of one another. In addition, applicants state that because a Participating Fund may acquire 5% or more of a Central Fund's outstanding voting securities, the Participating Fund and the Central Fund may be deemed to be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of a central Fund to a participating Fund and the redemption of shares by the Central Fund.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the Proposed Transactions satisfy the standards of sections 17(b) and 6(c). Applicants submit that the Proposed Transactions satisfy the standards of sections 17(b) and 6(c). Applicants note that the Proposed Transactions are reasonable and fair and would not involve overreaching because shares of the Central Funds will be purchased and redeemed at net asset value. Applicants state that the participating Funds will retain their ability to invest Uninvested Cash directly in money market instruments in accordance with their investment objectives and policies. Applicants also state that each Central Fund may discontinue selling its shares to the Participating Funds if the central Fund's Board determines that the sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Funds, by participating in the Proposed Transactions, and the Adviser, by managing the Proposed Transactions, could be deemed to be participants in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

8. In considering whether to permit a joint transaction under rule 17d–1, the commission considers whether the investment company's participation is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants state that, for the reasons discussed above, the proposed Transactions meet the standards for an order under rule 17d–1.

Applicants' Conditions

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

1. The shares of the Central Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted pursuant to rule 12b–1 under the Act, or service fee as defined in rule 2830(b)(9) of the NASD Rules of Conduct.

2. Before the next meeting of the Board of a Participating Fund is held for the purpose of voting on an investment advisory contract under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory agreement attributable to, managing the Uninvested Cash of the Participating Fund that can be expected to be invested in the Central Funds. Before approving any investment advisory contract under section 15, the Board of the Participating Fund, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for any change in the services provided to the Participating Fund by the Adviser as a result of Uninvested Cash being invested in the Central Funds. The minute books of the Participating Fund will record fully the Board's consideration in approving the advisory contract, including the consideration relating to fees referred to above.

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

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

5. No Central Fund shall acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Each Participating Fund and Central Fund that may rely on the requested order will be advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22214 Filed 8–29–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46417; File No. SR–NASD–2002–99]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Gross Income Assessments and Personnel Assessments

August 23, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On August 21, 2002, the NASD amended the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.