

time to time by each Fund's Board and by a majority of the Disinterested Members ("Schedule of Spreads").

b. The Schedule of Spreads will set forth rates of compensation to each Fund that are reasonable and fair and that are determined in light of those considerations set forth in the application.

c. The Schedule of Spreads will be uniformly applied to all Borrowers of a Fund's securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

d. If a security is loaned to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

e. The Program will be monitored on a daily basis by an officer of the Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to each Fund's Board, including a majority of the Disinterested Members.

5. Each Fund's Board, including a majority of the Disinterested Members, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of the requested order and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such procedures for their continuing appropriateness.

6. The Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the Borrower, the terms of the loan and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable and that the procedures followed in making such loan were in

accordance with the other undertakings set forth in the application.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-30913 Filed 12-5-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25839; 812-12874]**

### Stratigos Fund, L.L.C., et al.; Notice of Application

December 2, 2002.

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

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

*Summary of Application:* Applicants request an order to permit a limited liability company to transfer its assets to a registered closed-end investment company in exchange for interests in the closed-end investment company.

*Applicants:* Stratigos Fund, L.L.C. ("Stratigos"), Balius Fund, L.L.C. ("Balius") and CIBC Oppenheimer Advisers, L.L.C. ("Adviser").

*Filing Dates:* The application was filed on August 27, 2002. 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 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 December 27, 2002, and should be accompanied by proof of service on the 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, c/o CIBC World Market Corp., 622 Third Avenue, 8th Floor, New York, NY 10017.

**FOR FURTHER INFORMATION CONTACT:** John L. Sullivan, Senior Counsel, at (202) 942-0681, or Annette Capretta, 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. Stratigos, a Delaware limited liability company, is registered under the Act as a closed-end management investment company. Balius, a Delaware limited liability company, is not registered under the Act in reliance on section 3(c)(7) of the Act. Limited liability company interests ("Interests") in Stratigos and Balius are not registered under the Securities Act of 1933, as amended (the "1933 Act"), and are sold to investors ("Members") in a private placement in reliance upon section 4(2) of the 1933 Act and Regulation D under the 1933 Act.

2. The Adviser, a Delaware corporation, serves as (a) Stratigos' investment adviser and (b) the managing member of Balius and, in that capacity, has overall responsibility for the management, operation and administration of Balius, including Balius' investment activities. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. As of July 31, 2002, the Adviser owned an Interest in Stratigos with a net asset value of \$52,452.31 (which represented 0.74% of the value of the outstanding Interests in Stratigos as of such date). As of July 31, 2002, Canadian Imperial Holdings, Inc. ("CIHI"), an affiliated person of the Adviser, owned an Interest in Balius with a net asset value of \$67,459.64 (which represented 0.81% of the value of the outstanding Interests in Balius as of such date).

3. Applicants propose that, pursuant to an agreement and plan of acquisition ("Acquisition Agreement"), Balius will transfer to Stratigos substantially all of its assets, which will consist of cash and the portfolio securities of Balius that (a) are permissible investments under the investment policies and restrictions of Stratigos, as set forth in its offering memorandum ("Offering Memorandum") and its limited liability company agreement ("Company Agreement"), and (b) have readily available market quotations (the "Assets"), in exchange for Interests of Stratigos (the "Exchange"). All of

Balius' known liabilities (excluding short positions in securities and options) will be paid by Balius prior to the Exchange, and no liabilities of Balius (excluding short positions and options) will be transferred to Stratigos. Under the Acquisition Agreement, Interests of Stratigos delivered to Balius will have an aggregate net asset value equal to the net asset value of the Assets transferred by Balius to Stratigos. The Assets will be valued in accordance with the valuation policies of Stratigos as set forth in its Offering Memorandum and Company Agreement ("Valuation Procedures"). Interests in Stratigos received by Balius in the Exchange will be distributed to the Members of Balius and will be allocated to each Member of Balius in proportion to that Member's closing capital account in Balius, as determined immediately before the Exchange, in complete liquidation of Balius. The Exchange is scheduled to occur on or about December 31, 2002. No brokerage commissions, fees (except for customary transfer fees, if any) or other remuneration will be paid by Stratigos or Balius in connection with the Exchange. Stratigos and Balius each will pay its *pro rata* share, based on their relative net assets on the date of the Exchange, of the expenses incurred in connection with the Exchange. Applicants agree not to make any material changes to the Acquisition Agreement without prior approval of the Commission or its staff.

4. On August 1, 2002, the board of managers of Stratigos (the "Board"), including a majority of the members who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Managers"), approved the Acquisition Agreement. In approving the Acquisition Agreement, the Board concluded that: (a) The Exchange is consistent with the policies of Stratigos, as recited in its registration statement, (b) the terms of the Exchange, including the consideration to be received by Stratigos, are reasonable and fair and do not involve overreaching on the part of any concerned, (c) participation by Stratigos in the Exchange is in the best interests of Stratigos and its Members and the Interests of existing Members of Stratigos will not be diluted as a result of the Exchange, and (d) the Exchange is consistent with the general purposes of the Act. These findings, and the basis upon which they were made, are recorded in the minute books of Stratigos.

5. With respect to Balius, the Adviser (as Balius' managing member) believes that the Exchange is in the best interests of Balius and the Members of Balius.

The Exchange is required to be approved by Members of Balius that represent more than 50% of the aggregate value of the outstanding Interests of Balius.

6. The Exchange will not be effected until: (a) The Commission has issued the requested order; and (b) Stratigos and Balius have received an opinion of counsel substantially to the effect that the Exchange will not result in taxable income to Balius, Stratigos or their respective Members.

#### Applicants' Legal Analysis

1. Section 17(a)(1) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to the registered investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" as, among other things, any person controlling, controlled by, or under common control with, the other person; and, if the other person is an investment company, its investment adviser. Section 2(a)(9) of the Act, in relevant part, defines "control" as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official positions with such company."

2. Applicants state that Balius could be deemed to be an affiliated person of Stratigos because Balius and Stratigos might be deemed to be under the common control of the Adviser. Thus, applicants state that the proposed Exchange may be prohibited under section 17(a) of the Act.

3. Rule 17a-7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction is for no consideration other than cash. Applicants state that the relief provided by rule 17a-7 may not be available for the Exchange because the Exchange will involve consideration other than cash (*i.e.*, Interests of Stratigos) and certain of the assets transferred will be valued in accordance with the Valuation Procedures, rather than the methodology set forth in paragraph (b) of rule 17a-7.<sup>1</sup> Applicants also state that

<sup>1</sup> Under the Valuation Procedures, domestic exchange traded or NASDAQ listed equity securities are valued at their last composite sales price as reported on the exchanges where those securities are traded. If no sales of such securities are reported on a particular day, the securities are valued based upon their composite bid prices for

Balius may be deemed to be affiliated with Stratigos for reasons other than those set forth in the rule 17a-7. There is a possibility that, as a result of withdrawals of capital by Members of Balius and Stratigos prior to the Exchange, the Adviser or CIHI may, at the time of the Exchange, own five percent or more of the outstanding Interests in Stratigos or Balius, or both.

4. Rule 17a-8 exempts certain transactions (including mergers, consolidations or purchases or sales of substantially all of the assets of a company (collectively, "Asset Acquisitions")) otherwise prohibited by section 17(a) of the Act, provided, among other requirements, that the Asset Acquisition is between registered investment companies or between a registered investment company and an eligible investment fund (as defined in the rule) ("Eligible Unregistered Fund"). Applicants state that the relief provided by rule 17a-8 may not be available for the Exchange because the Exchange will involve Balius, which is not a registered investment company nor an Eligible Unregistered Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from the provisions of section 17(a) of the Act if the terms of the 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.

6. Applicants submit that the terms of the Exchange meet the criteria contained in section 17(b) of the Act. Applicants state that the Interests issued by Stratigos will have an aggregate net asset value equal to the aggregate net asset value of the assets acquired from Balius. Because the Valuation Procedures will be those used by Stratigos to value its portfolio securities, the Interests of existing Members of Stratigos will not be diluted as a result of the Exchange. Applicants also state that the investment objective and policies of Balius are substantially similar to those of Stratigos. Applicants further state that the Board, including a majority of the Independent Managers, has approved the Acquisition

securities held long, or their composite ask prices for securities held short, as reported by such exchanges. The rationale for this approach is that in the absence of an actual sale price, the bid would best reflect the price at which Stratigos could expect to sell securities held long and the ask would best reflect the price at which Stratigos could expect to purchase the securities held short if it were required to do so.

Agreement and that the Exchange will comply with the terms of paragraph (b) of rule 17a-7, except as described in the application, paragraphs (c), (d), (e), (f) and (g) of rule 17a-7 and the provisions of rule 17a-8 (as those provisions apply to a merger of an Eligible Unregistered Fund with a registered investment company).

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition: The Exchange will comply with the terms of paragraph (b) of Rule 17a-7, except as described in the application, paragraphs (c), (d), (e), (f) and (g) of Rule 17a-7 and the provisions of Rule 17a-8 (as these provisions apply to a merger of an Eligible Unregistered Fund with a registered investment company).

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-30914 Filed 12-5-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 67 FR 71599, December 2, 2002.

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**ANNOUNCEMENT OF CLOSED MEETING:** Additional Meeting.

The Securities and Exchange Commission held an additional Closed Meeting on December 3, 2002 at 2:30 p.m. The subject matter of that meeting was a regulatory matter bearing enforcement implications.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: December 4, 2002.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02-31021 Filed 12-4-02; 12:57 pm]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 9, 2002:

A Closed Meeting will be held on Tuesday, December 10, 2002, at 10 a.m., and an Open Meeting will be held on Wednesday, December 11, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

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

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, December 10, 2002 will be:

Formal orders of investigation; Institution and settlement of administrative proceedings of an enforcement nature; and Institution and settlement of injunctive actions.

The subject matter of the Open Meeting scheduled for Wednesday, December 11, 2002 will be:

1. The Commission will consider whether to adopt the repeal of Rule 11Ac1-7 under the Securities Exchange Act of 1934. Rule 11Ac1-7 requires a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote, and to disclose the better published quote available at that time, unless the broker-dealer effects the transaction on an exchange that participates in an approved linkage plan.

2. The Commission will consider whether to propose amendments to Forms N-1A, N-2, N-3, proposed Form N-CSR, and Articles 6 and 12 of Regulation S-X as well as new rule 30b1-4 and new Form N-Q under the Investment Company Act. The proposals would (1) require a registered management investment company to file a schedule of its complete portfolio holdings with the Commission on a

quarterly basis; (2) permit a registered management investment company to include a summary portfolio schedule in reports to shareholders and exempt money market funds from including a portfolio schedule in reports to shareholders, provided that the complete portfolio schedule is filed with the Commission and available to shareholders upon request; (3) require a registered management investment company to include a tabular or graphic presentation of a fund's portfolio holdings in its reports to shareholders; (4) require a mutual fund to disclose in its reports to shareholders fund expenses borne by shareholders during the reporting period; and (5) require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

3. The Commission will consider whether to adopt amendments to rule 203A-2(f) under the Investment Advisers Act of 1940 to exempt certain investment advisers that provide advisory services through the Internet from the prohibition on Commission registration.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: December 3, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-31022 Filed 12-4-02; 12:58 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46929; File No. SR-CSE-2002-17]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to an Extension of an Existing Pilot Amending CSE Rule 12.6, Customer Priority, To Require Designated Dealers to Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

November 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.