of representatives from the Organization of Agreement States (OAS), the Conference of Radiation Control Program Directors, Inc. (CRCPD), and NRC staff. The direction of the National Materials Program will be guided by the lessons learned and experience gained from the pilot projects.

Efforts to establish a National Materials Program were initiated with NRC Commission approval in 1999. Objectives of this program include: Individual program activities to protect public health and safety; sharing of Federal and State resources to maintain necessary supporting regulations, guidance and other program elements needed for the nationwide materials program; accounting for individual agency needs and abilities; promoting consensus on regulatory priorities; promoting consistent exchange of information; harmonizing regulatory approaches; and recognizing State and Federal needs for flexibility.

DATES: To help ensure coordination and sharing of information with the OAS, the CRCPD, and the public, the working groups will place information regarding the pilot projects and working group meetings at the Office of State and Tribal Programs' Web site at *http://www.hsrd.ornl.gov/nrc/home.html.*

FOR FURTHER INFORMATION CONTACT: Shawn Rochelle Smith, U.S. Nuclear Regulatory Commission, Office of State and Tribal Programs, Mail Stop: O3-C10, Washington, DC 20555. Telephone: 301–415–2620, E-mail: *srs3@nrc.gov.*

SUPPLEMENTARY INFORMATION: The goals of the five pilot projects are: (1) *Pilot 1*—Involvement of Agreement States in the establishment of priorities for development of materials policy, rulemaking, and guidance products in the materials and waste arenas; Chair, Shawn Rochelle Smith, NRC/Office of State and Tribal Programs; (2) *Pilot 2*—Assumption by CRCPD of lead responsibility for the administration of a national radiographer certification program, including the development of recommendations for follow-up evaluations of program status, and testing and program maintenance activities; Chair, Jan Endahl, Texas Department of Health; (3) *Pilot 3*—To develop and test a structured process for evaluating cumulative licensee data and performance, identify gaps in NRC and Agreement State processes, and develop strategies and tools to make the programs more scrutable, predictable, and transparent; Chair, Michael Markley, NRC/Office of Nuclear Material Safety and Safeguards; (4) *Pilot 4*—Assumption by an Agreement State of responsibility for development of licensing and inspection guidance for a new use of material, or a new modality, not previously reviewed and approved; Chair, Kathy Allen, Illinois Department of Nuclear Safety; and (5) *Pilot 5*—Implementation of specific Phase II recommendations, including ongoing work of the existing working group to draft and pilot test revisions to Inspection Manual Chapter 2800; Chair, Thomas Young, NRC/Office of Nuclear Material Safety and Safeguards.

Dated in Rockville, Maryland, this 23rd day of April, 2003.

For the U.S. Nuclear Regulatory Commission.

Josephine M. Piccone,

Deputy Director, Office of State and Tribal Programs.

[FR Doc. 03–10610 Filed 4–29–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26027; 812–12861]

The Commerce Funds and Commerce Investment Advisors, Inc.; Notice of Application

April 24, 2003.

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

ACTION: Notice of 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 and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY: The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies both within and outside the same group of investment companies.

Applicants: The Commerce Funds (the ''Trust'') and Commerce Investment Advisors, Inc. (the ''Adviser'').

DATES: The application was filed on July 23, 2002, and amended on February 21, 2003. 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 May 19, 2003, 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, 1000 Walnut Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, 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, (202) 942–8090.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act that is comprised of eleven investment portfolios (each a ''Fund''), each of which pursues a distinct set of investment objectives and policies. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Trust. The Adviser is a wholly-owned subsidiary of Commerce Bank, N.A. and an indirect subsidiary of Commerce Bancshares, Inc., a registered multi-bank holding company.

2. Goldman, Sachs & Co. (''Goldman Sachs'') is a broker-dealer registered under the Securities Exchange Act of 1934 and serves as the principal underwriter/distributor of the Trust. Goldman Sachs is a business unit of The Goldman Sachs Group, Inc. (''GS Group''). Goldman Sachs Asset Management (''GSAM'') serves as administrator to the Trust. As administrator, GSAM supplies the Trust with administrative officers who are responsible for performing administrative functions on behalf of the Trust.[1]

3. Applicants request relief to permit: (a) One or more series of the Trust and

[1] The Trust and Goldman Sachs have received an order to permit principal transactions effected in the ordinary course of business between the Trust and Goldman Sachs. *See Benchmark Funds,* et al., Investment Company Act Rel. Nos. 22882 (Nov. 12, 1997) (notice) and 22929 (Dec. 9, 1997) (order) (the ''Benchmark Order'').

any other registered open-end investment company or series thereof that is part of the same group of investment companies as the Trust (each a ''Fund of Funds'') to acquire shares of registered open-end management investment companies that are not part of the same group of investment companies as the Fund of Funds (the ''Non-Affiliated Underlying Funds'') and the Non-Affiliated Underlying Funds to sell such shares to the Fund of Funds; and (b) the Fund of Funds to acquire shares of certain other series of the Trust and any other registered open-end investment company or series thereof that is part of the same group of investment companies as the Trust (the ''Affiliated Underlying Funds'') (together with the Non-Affiliated Underlying Funds, the ''Underlying Funds'') and the Affiliated Underlying Funds to sell such shares to the Fund of Funds.[2] The requested order would apply to purchases made by the Fund of Funds only where the Fund of Funds could not rely on the provisions of section 12(d)(1)(F) of the Act. A Fund of Funds also may make direct investments in stocks, bonds, and any other securities which are consistent with its investment objective.

4. Applicants state that each Fund of Funds will enable investors to create either a comprehensive asset allocation program or achieve diversification in a specific segment of the market with just one investment. Applicants assert that a Fund of Funds will provide a simple, convenient, low cost investment program for investors who are able to identify their long-term investment goals but who may not be comfortable deciding how to invest their assets to achieve those goals.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares 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 generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Fund of Funds to acquire shares of the Underlying Funds and the Underlying Funds to sell their shares to the Fund of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over Underlying Funds. To limit the influence that a Fund of Funds may have over a Non-Affiliated Underlying Fund, applicants propose a condition prohibiting the Adviser, the Fund of Funds, and certain affiliates (individually or in the aggregate) from controlling a Non-Affiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over the Non-Affiliated Underlying Funds, applicants propose conditions 2 through 7, stated below, to preclude a Fund of Funds and its affiliated entities from taking advantage of a Non-Affiliated Underlying Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.[3]

5. As an additional assurance that a Non-Affiliated Underlying Fund understands the implications of an investment by a Fund of Funds under the requested order, the Fund of Funds and Non-Affiliated Underlying Fund will execute an agreement (prior to an investment in the shares of the Non-Affiliated Underlying Fund in excess of the limits of section 12(d)(1)(A)(i) of the Act) stating that the board of directors or trustees of the Non-Affiliated Underlying Fund and the adviser to the Non-Affiliated Underlying Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that a Non-Affiliated Underlying Fund may choose to reject an investment from the Fund of Funds.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that the board of trustees of the Fund of Funds (the ''Board''), including a majority of the trustees who are not ''interested persons'' as such term is defined in section 2(a)(19) of the Act (''Disinterested Trustees''), will find that the investment advisory fees charged under any investment advisory agreements are based on services provided that will be in addition to, rather than duplicative of, services provided under the investment advisory agreement of any Underlying Fund in which a Fund of Funds may invest. In addition, the Adviser will waive fees otherwise payable to the Adviser by a Fund of Funds in an amount at least equal to any compensation received by the Adviser, or an affiliated person of the Adviser, from a Non-Affiliated Underlying Fund in connection with the investment by the Fund of Funds in the Non-Affiliated Underlying Fund. Applicants also state that the aggregate sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers (''NASD Conduct Rules'').

7. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more

[2] All existing entities that currently intend to rely on the requested order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application.

[3] Applicants assert that Goldman Sachs has no control or influence over the investment decisions of the Trust (including the Fund of Funds), and therefore cannot use the Fund of Funds structure to exercise an undue influence over a Non-Affiliated Underlying Fund in any way. Therefore, conditions 4, 6, and 7 would not apply to a GS Group entity.

affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions. In addition, applicants represent that a Fund of Funds' prospectus contains and will contain concise, ''plain English'' disclosure designed to inform investors of the unique characteristics of the Fund of Funds structure, including, but not limited to, its expense structure and the additional expenses of investing in the Underlying Funds.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person and any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Fund of Funds and the Affiliated Underlying Funds may be deemed to be under common control by virtue of having the same Adviser. Applicants also state that a Fund of Funds and an Underlying Fund might become affiliated persons if the Fund of Funds acquires more than 5% of the Underlying Fund's outstanding voting securities. In light of this possible affiliation, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from the Fund of Funds.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Underlying Funds will be based on the net asset values of the Underlying Funds. Applicants state that the proposed arrangement will be consistent with the policies of each Fund of Funds as set forth in each Fund of Funds' registration statement, the policies of each Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions

1. (a) The Adviser, (b) any person controlling, controlled by, or under common control with the Adviser, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser (collectively, the ''Group'') will not control (individually or in the aggregate) a Non-Affiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Non-Affiliated Underlying Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Non-Affiliated Underlying Fund, the Group will vote its shares of the Non-Affiliated Underlying Fund in the same proportion as the vote of all other holders of the Non-Affiliated Underlying Fund's shares.

2. The Fund of Funds and its Adviser, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a ''Fund of Funds Affiliate'') will not cause any existing or potential investment by the Fund of Funds in shares of a Non-Affiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Non-Affiliated Underlying Fund or its investment adviser, sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a ''Non-Affiliated Underlying Fund Affiliate'').

3. The Board of the Fund of Funds, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to ensure that the Adviser is conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from a Non-Affiliated Underlying Fund or a Non-Affiliated Underlying Fund Affiliate in connection with any services or transactions.

4. Once an investment by the Fund of Funds in the securities of a Non-Affiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of each Non-Affiliated Underlying Fund, including a majority of the disinterested directors or trustees, will determine that any consideration paid by the Non-Affiliated Underlying Fund to the Fund of Funds or a Fund of Funds Affiliate (other than a GS Group entity) in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Non-Affiliated Underlying Fund; (b) is within the range of consideration that the Non-Affiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

5. No Fund of Funds or Fund of Funds Affiliate will cause a Non-Affiliated Underlying Fund to purchase a security from an underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, or employee of the Fund of Funds or a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person (each an ''Underwriting Affiliate''). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (other than a GS Group entity) is referred to as an ''Affiliated Underwriting.''

6. The board of directors or trustees of a Non-Affiliated Underlying Fund, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to monitor any purchases by the Non-Affiliated Underlying Fund of securities in Affiliated Underwritings once an investment by the Fund of Funds in the securities of the Non-Affiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate (other than a GS Group entity). The board of directors or trustees of the Non-Affiliated Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds

in shares of the Non-Affiliated Underlying Fund. The board of directors or trustees of the Non-Affiliated Underlying Fund will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Non-Affiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Non-Affiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from Underwriting Affiliates (other than a GS Group entity) have changed significantly from prior years. The board of directors or trustees of the Non-Affiliated Underlying Fund shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

7. A Non-Affiliated Underlying Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase made once an investment by the Fund of Funds in the securities of a Non-Affiliated Underlying Fund exceeded the limits of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

8. Prior to an investment in shares of a Non-Affiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), the Fund of Funds and the Non-Affiliated Underlying Fund will execute an agreement stating, without limitation, that the board of directors or trustees of the Non-Affiliated Underlying Fund and the investment adviser to the Non-Affiliated Underlying Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Non-Affiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), the Fund of Funds will notify the Non-Affiliated Underlying Fund of the investment. At such time, the Fund of Funds also will transmit to the Non-Affiliated Underlying Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Non-Affiliated Underlying Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Non-Affiliated Underlying Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period of not less than six years from the end of the fiscal year in which any investment occurred, the first two years in an easily accessible place.

9. Prior to approving any investment advisory or management contract under section 15 of the Act, the Board of the Fund of Funds, including a majority of the Disinterested Trustees, will find that the advisory or management fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, the services provided to Underlying Funds in which the Fund of Funds will invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund of Funds.

10. Any sales charges and/or service fees (as those terms are defined in rule 2830 of the Conduct Rules of the NASD) charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in rule 2830 of the Conduct Rules of the NASD.

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

12. The Adviser will waive fees otherwise payable to the Adviser by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by a Non-Affiliated Underlying Fund pursuant to rule 12b–1 under the Act) received by the Adviser, or an affiliated person of the Adviser, from a Non-Affiliated Underlying Fund in connection with the investment by the Fund of Funds in the Non-Affiliated Underlying Fund.

13. The nature of the services provided by Goldman Sachs to and the relationship with Goldman Sachs of any Fund of Funds relying on the requested order will be consistent with the representations made in the Benchmark Order. Goldman Sachs will not be an affiliated person or a second-tier affiliate of any investment adviser to any registered investment company relying on the requested order. Goldman Sachs and its affiliated persons will have no influence or control over the investments made by any registered investment company relying on the requested order. No affiliated person of Goldman Sachs will serve as a director of any registered investment company relying on the requested order.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–10629 Filed 4–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be announced].

STATUS: Open meeting/closed meeting.

PLACE: 450 Fifth Street, NW., Room 6600, Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, April 30, 2003 at 10 a.m., Thursday, May 1, 2003 at 10 a.m.

CHANGE IN THE MEETING: Time changes.

The Open Meeting schedule for Wednesday, April 30, 2003 at 10 a.m. has been changed to Wednesday, April 30, 2003 at 9:30 a.m.

The Closed Meeting scheduled for Thursday, May 1, 2003 at 10 a.m. has been changed to Thursday, May 1, 2003 at 3 p.m.

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.