

ended September 30, 2003 for the Loomis Sayles Core Plus Bond Fund). The Metropolitan Fund State Street Research Money Market Portfolio's total expense ratio for the fiscal year ended December 31, 2002 was lower than the CDC Nvest Cash Management Trust—Money Market Series for the fiscal year ended June 30, 2003, even though the Metropolitan Fund State Street Research Money Market Portfolio imposes a 12b-1 fee while the CDC Nvest Cash Management Trust—Money Market Series does not. To ensure such lower expenses, MetLife has agreed to impose a permanent expense cap on the Metropolitan Fund State Street Research Money Market Portfolio, as described *infra*. Further, the Replacement Portfolios generally have outperformed the Substituted Portfolios over time and the generally increasing asset levels of the Replacement Portfolios should lead to continued lower expense ratios over time.

6. The rights of the Contract owners and the obligations of MetLife under the Contracts would not be altered by the Substitutions except, of course, that Contract owners will not be able to continue to allocate contract value to subaccounts that currently invest in the Substituted Portfolios. Contract owners will not incur any additional tax liability as a result of the Substitutions. MetLife will bear the costs of any legal or accounting fees and transactional expenses of the Substitutions, including brokerage commissions.

7. The Applicants assert that the procedures to be implemented are sufficient to assure that each Contract owner's contract value immediately after the Substitutions shall be equal to the contract value immediately before the Substitutions, and that the Substitutions will not affect the value of the interests of those owners of other MetLife variable contracts (other than the Contracts) who currently have contract value allocated to any of the portfolios of the Metropolitan Fund, the CDC Nvest Cash Management Trust, the CDC Nvest Funds Trust II, or the CDC Nvest Funds Trust I.

8. The Applicants will permit Contract owners to transfer contract value from any subaccount to any other subaccount without charge, but subject to minimum transfer requirements. The Applicants also note that, in accordance with the terms of the Contracts, no sales charges or surrender charges or other charges will apply to transfers in connection with the Substitutions, and MetLife represents that no such charge shall be imposed.

9. The Applicants request an order of the Commission pursuant to Section

26(c) of the 1940 Act approving the Substitutions by the Applicants. The Applicants submit that, for all the reasons stated above, the Substitutions are consistent with the protection of investors and the purposes fairly intended by the provisions of the 1940 Act.

Applicants' Conditions for Relief

For purposes of the approval sought pursuant to Section 26(c) of the 1940 Act, the Substitutions described in this amended and restated Application will not be completed unless all of the following conditions are met.

1. The Commission shall have issued an order approving the Substitutions under Section 26(c) of the 1940 Act as necessary to carry out the transactions described in this amended and restated Application.

2. Each Contract owner will have been sent (a) prior to the Effective Date, a copy of the effective prospectuses for the Replacement Portfolios, (b) prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitutions and the rights of the Contract owners in connection with the Substitutions, and (c) a Post-Substitution Notice within five days after the Substitutions informing them that the Substitutions were carried out and advising them of their transfer rights.

3. MetLife shall have satisfied itself that (a) the Contracts allow the substitution of portfolios in the manner contemplated by the Substitutions and related transactions described herein, (b) the transactions can be consummated as described in this amended and restated Application under applicable insurance laws, and (c) that any applicable regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the transaction.

Conclusion

Applicants request an order of the Commission pursuant to Section 26(c) of the Act approving the Substitution. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-4568 Filed 3-1-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26369; 812-12927]

Real Estate Income Fund Inc., et al.; Notice of Application

February 25, 2004.

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 19(b) of the Act and rule 19b-1 under the Act.

Summary of the Application:

Applicants request an order to permit certain registered closed-end management investment companies to make periodic distributions of long-term capital gains, as often as monthly, on their outstanding common stock and as often as distributions are specified in the terms of any preferred stock.

Applicants: Real Estate Income Fund Inc. ("REIF"), Salomon Brothers Capital Income Fund Inc. ("SBCIF"), Citi Fund Management Inc. ("CFMI"), Salomon Brothers Asset Management Inc. ("SBAM," together with CFMI, the "Advisers") and each registered closed-end management investment company currently or in the future advised by an Adviser (including any successor in interest)¹ or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Advisers (included in the term Advisers) that decides in the future to rely on the requested relief (together with REIF and SBCIF, the "Funds").²

Filing Dates: The application was filed on February 6, 2003 and amended on February 23, 2004.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a

¹ A successor in interest is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

² All existing Funds currently intending to rely on the requested order are named as applicants, and any Fund that may rely on the order in the future will comply with the terms and conditions of the application.

hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 22, 2004, and should be accompanied by proof of service on the Applicant 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. Applicant, c/o Burton M. Leibert, Esq., Willkie Farr & Gallagher, 787 Seventh Avenue, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942-0634, or Todd Kuehl, 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 from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. REIF is organized as a Maryland corporation and is registered under the Act as a non-diversified closed-end management investment company. REIF's primary investment objective is to seek high current income by investing at least 90% of its assets in income-producing equity securities and debt securities issued by real estate companies. REIF's common stock is listed and traded on the New York Stock Exchange ("NYSE"). SBCIF is organized as a Maryland corporation and is registered under the Act as a non-diversified closed-end management investment company. SBCIF's investment objective is total return with an emphasis on income by investing at least 80% of its assets in equity and fixed income securities of U.S. and foreign issuers. SBCIF's common stock has been approved for listing on the NYSE, subject to notice of issuance. CFMI and SBAM are registered as investment advisers under the Investment Advisers Act of 1940 and serves as investment adviser to REIF and SBCIF, respectively. CFMI and SBAM are indirect wholly owned subsidiaries of Citigroup Inc.

2. The periodic pay-out policy with respect to a Fund's common shares will be initially established and will be reviewed at least annually by the board of directors/trustees ("Board") of the Fund, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Members"). On June 19, 2002, and November 13, 2003, REIF's Board, including a majority of the Independent Members, concluded that the proposed distribution policies of REIF, with respect to common shares only, would be in the best interests of REIF's shareholders. On January 20, 2004, SBCIF's Board, including a majority of the Independent Members, concluded that the proposed distribution policies of SBCIF, with respect to common shares only, would be in the best interests of SBCIF's shareholders.

3. The order would permit each Fund to make periodic long-term capital gains distributions as often as monthly with respect to its common stock and as often as distributions are specified in the terms of its preferred stock,³ so long as it maintains in effect a distribution policy (a) with regard to their common stock of at least a minimum fixed percentage per year of the net asset value ("NAV") or market price per share of its common stock or at least a minimum fixed dollar amount per year, and (b) with regard to each series of their preferred stock of a specified percentage of liquidation preference, whether such specified percentage is determined at the time the preferred stock is initially issued, or pursuant to periodic remarketing or auctions ("Distribution Policies"). The Boards also considered that the Distribution Policies may help each Fund attract new investors which could have a positive effect on the market price of each Fund's common shares. In addition, applicants state that to the extent that any of the Fund's preferred stock pays dividends less frequently than investors in that type of preferred stock would expect, the Funds are at a competitive disadvantage and, consequently, are likely to be required to pay a higher dividend rate on their preferred stock than issuers who pay at the desired frequency. Applicants state that the frequency of the specified periodic payments with respect to preferred stock of the Funds and the periodic pay-out with respect to common stock of the Funds will not be related to one another in any way other than that the Funds'

³ SBCIF has not issued and currently does not intend to issue preferred stock.

ability to comply with Revenue Ruling 89-81 will be enhanced.

4. Applicants request relief to permit each Fund, so long as it maintains in effect a Distribution Policy, to make periodic long-term capital gains distributions, as often as monthly, on its outstanding common stock and as specified by the terms of any preferred stock outstanding.

Applicants' Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b-1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gain distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b-1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b-1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicants assert that rule 19b-1 under the Act, by limiting the number of net long-term capital gains distributions that the Funds may make in any one year, would prevent implementation of the Funds' proposed Distribution Policies. Applicants state that because each Fund expects to realize net long-term capital gains as often as every month, the combination of Revenue Ruling 89-81 and the accounting interpretation relating to rule 19b-1 would cause each Fund to treat a portion of such net long-term capital gains as being distributed each time it has incremental or undistributed long-term capital gains for the current distribution period. Applicants state that Revenue Ruling 89-81 takes the position that if a regulated investment company has two classes of shares, it may not designate distributions made to either class in any year as consisting of more than such class's proportionate share of particular types of income, such as capital gains. Consequently, applicants state that any payments of long-term capital gains to holders of common stock require proportionate allocations of such long-term capital gains to the preferred stock, which can be extremely difficult to do.

3. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of the

rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicants state that, in accordance with rule 19a-1 under the Act, a statement showing the source or sources of the distribution will accompany each distribution (or the confirmation of the reinvestment thereof under a Fund's common stock distribution reinvestment plan). Applicants state that, for both the common stock and the preferred stock, the amount and sources of distributions received during the year has been or will be included on each Fund's IRS Form 1099-DIV reports of distributions during the year, which will be sent to each shareholder who received distributions (including shareholders who have sold shares during the year). Applicants state that this information, on an aggregate basis, also has been, or will be, included in each Fund's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b-1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution ("selling the dividend"), where the dividend results in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as the Funds, which do not continuously distribute their shares. Applicants also assert that by paying out periodically any capital gains that have occurred, at least up to the fixed periodic payout amount, the Funds' Distribution Policies help avoid the buildup of end-of-the-year distributions and accordingly actually help avoid the scenario in which an investor acquires shares in the open market that are subject to a large upcoming capital gains dividend. Applicants also state that the "selling the dividend" concern is not applicable to preferred stock, which entitles a holder to a specific periodic dividend and, like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment. In addition, applicants state that any rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date

of a quarterly dividend. Thus, applicants state that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, a Fund's Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any offering by a Fund of transferable rights will comply with any applicable rules of the National Association of Securities Dealers, Inc. regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief satisfies this standard.

Applicants' Condition

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

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

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

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49315; File No. SR-Amex-2004-08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to Trust Certificates Linked to a Basket of Investment Grade Fixed Income Securities

February 24, 2004.

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 January 26, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under Section 107A of the Amex Company Guide ("Company Guide"), trust certificates linked to a basket of investment grade fixed income debt instruments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.