participants most likely to seek to present thoughtful suggestions on negotiated service agreement policies to the Commission.

As a first step, the Commission grants the Postal Service's motion to file a memorandum addressing the pertinent legal, economic, and practical issues in regard to the questions raised by the Governors in their decision. The Postal Service also may include a proposal for an evidentiary approach that could serve as a standard for future negotiated service agreement proposals. The Postal Service shall file this material by April 15, 2005.

As the Postal Service must accommodate the time pressures involved with preparing for an omnibus rate case, participants in this proceeding for reconsideration also will face time pressures once the omnibus rate case is filed. For this reason, until the scope of the Postal Service comments and proposals can be evaluated it is premature to map out a procedural schedule for issuing an Opinion and Further Recommended Decision in this case.

The Commission will review and evaluate the scope and potential impact of the initial material submitted by the Postal Service before determining an appropriate procedural path to bring this docket to a conclusion, with due consideration to the scheduling difficulties all parties and the Commission face when an omnibus rate case is pending. After the Commission determines an appropriate procedural path, a procedural schedule will be established.

This notice and order initiates the reconsideration of the Commission's Opinion and Recommended Decision Approving Negotiated Service Agreement in Docket No. MC2004–3. The Secretary shall arrange for its publication in the **Federal Register**.

Ordering Paragraphs

It is ordered:

1. The Commission will reconsider its Opinion and Recommended Decision Approving Negotiated Service Agreement in Docket No. MC2004–3 and issue a further recommended decision.

2. United States Postal Service Motion for Leave to File Memorandum on Reconsideration and for Proposed Procedures, March 7, 2005, is granted consistent with the text of this order. The Postal Service shall file its memorandum and proposal by April 15, 2005.

3. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

Issued: March 16, 2005.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. 05–5504 Filed 3–18–05; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No.26784; 812–12948]

Burnham Investors Trust, et al., Notice of Application

March 15, 2005.

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, 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 OF APPLICATION: The applicants request an order that would permit (a) certain registered management investment companies and certain entities that are excluded from the definition of investment company pursuant to section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act to invest uninvested cash and cash collateral in (i) affiliated money market funds and/or short-term bond funds or (ii) one or more affiliated entities that operate as cash management investment vehicles and that are excluded from the definition of investment company pursuant to section 3(c)(1) or 3(c)(7) of the Act, and (b) the registered investment companies and the affiliated entities to continue to engage in purchase and sale transactions involving portfolio securities in reliance on rule 17a–7 under the Act.

APPLICANTS: Burnham Investors Trust (the ''Investment Company'') and Burnham Asset Management Corporation (and any entity controlling, controlled by, or under common control with Burnham Asset Management Corporation, the ''Adviser'').

FILING DATES: The application was filed on March 27, 2003, and amended on March 14, 2005.

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 April 11, 2005, 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, 1325 Avenue of the Americas, 26th Floor, New York, NY, 10019.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 551–6815 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (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. The Investment Company is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. Each series of the Investment Company has separate investment objectives and policies. The Adviser currently serves as the investment adviser to the Investment Company. The Adviser is a Delaware corporation and is registered under the Investment Advisers Act of 1940.[1] Funds that are not money market funds and Non-Registered Funds (the ''Participating Funds'') have or may be expected to have cash that has not been invested in portfolio securities (''Uninvested Cash''). Uninvested Cash may result

[1] Applicants request that any relief granted also apply to (a) any other registered management investment company and series thereof for which the Adviser currently is, or in the future may act as, investment adviser (together with all existing and future series of the Investment Company, the ''Funds'') and (b) any entity excluded form the definition of investment company pursuant to section 3(c)(1(, 3(c)(7) or 3(c)(11) of the Act, for which the Adviser currently is, or in the future may act as, investment adviser or trustee exercising investment discretion (''Non-Registered Funds''). All entities that currently intend to reply on the order have been named as applicants. Any other existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments or money from investors. Each Participating Fund that is a series of the Investment Company also may participate in a securities lending program (''Securities Lending Program'') under which it may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are secured by collateral, including cash collateral (''Cash Collateral'' and together with Uninvested Cash, ''Cash Balances''), equal at all times to at least the market value of the securities loaned. Currently, the Adviser can invest Cash Balances directly in money market instruments or other short-term debt obligations. Applicants state that Participating Funds will either be management investment companies registered under the Act (''Registered Participating Funds'') or trusts or other entities that are excluded from the definition of investment company pursuant to section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act for which the Adviser acts as trustee or investment adviser (''Non-Registered Participating Funds'').

2. Applicants request an order to permit: (i) The Participating Funds to use their Cash Balances to purchase shares of one or more of the Funds that are money market funds or short-term bond funds (the ''Registered Central Funds'') or shares of one or more Non-Registered Funds that operate as cash management investment vehicles and that are excluded from the definition of investment company pursuant to section 3(c)(1) or 3(c)(7) of the Act (the ''Non-Registered Central Funds'') (the Registered Central Funds and the Non-Registered Central Funds, collectively, the ''Central Funds''); (ii) the Central Funds to sell their shares to and redeem such shares from the Participating Funds; (iii) the Participating Funds and the Central Funds to engage in interfund purchase and sale transactions in securities (''Interfund Transactions''); and (iv) the Adviser to effect the above transactions.

3. The investment by each Registered Participating Fund in shares of the Central Funds will be in accordance with that Registered Participating Fund's investment policies and restrictions as set forth in its registration statement. The Registered Central Funds are or will be taxable or tax-exempt money market funds that comply with rule 2a–7 under the Act or short-term bond funds that invest in fixed-income securities and maintain a dollar-weighted average portfolio maturity of three years or less. Each Non-Registered Central Fund will comply with rule 2a–7 under the Act.

Applicants' Legal Analysis

I. Investment of Cash Balances by the Participating Funds in the Central Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no investment company may acquire securities of a registered 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 if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's 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. Any entity that is excluded from the definition of investment company pursuant to section 3(c)(1) or 3(c)(7) of the Act is deemed to be an investment company for the purposes of the 3% limitation specified in sections 12(d)(1)(A) and (B) with respect to purchases by and sales to such company.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Participating Funds to use their Cash Balances to acquire shares of the Registered Central Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases a Registered Participating Fund's aggregate investment of Uninvested Cash in shares of the Central Funds will not exceed the greater of 25% of the Registered Participating Fund's total assets or $10 million. Applicants also request relief to permit the Registered Central Funds to sell their securities to the Participating Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that there is no threat of redemption to gain undue influence over the Central Funds due to the highly liquid nature of each Central Fund's portfolio. Applicants also state that the proposed arrangement will not result in inappropriate layering of fees. If a Central Fund offers more than one class of shares in which a Registered Participating Fund may invest, the Registered Participating Fund will invest its Cash Balances only in the class with the lowest expense ratio at the time of investment. Applicants also state that no sales load, redemption fee, asset-based sales charge or service fee will be charged in connection with the purchase and sale of shares of the Central Funds. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Registered Participating Fund (''Board''), including a majority of trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), shall consider to what extent, if any, the advisory fees charged to the Registered Participating Fund by the Adviser should be reduced to account for the reduced services provided to the Registered Participating Fund as a result of Uninvested Cash being invested in the Central Funds. Applicants represent that no Central Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the investment 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 more of whose outstanding 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. Because the Adviser serves or will serve as each Fund's investment adviser, and may serve as trustee of a Non-Registered Fund, the Funds and Non-Registered

Funds may be deemed to be under common control and thus affiliated persons of each other. In addition, if a Participating Fund purchases more than 5% of the voting securities of a Central Fund, the Central Fund and the Participating Fund may be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of Central Funds to the Participating Funds, and the redemption of the shares by the Participating Funds.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act 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 with 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.

3. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Central Funds by the Participating Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Central Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Registered Participating Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they can achieve a higher return or for any other reason. Applicants state that each of the Registered Central Funds has the right to discontinue selling shares to any of the Participating Funds if the Registered Central Fund's Board or the Adviser determines that such sale would adversely affect the Registered Central Fund's portfolio management and operations.

C. Section 17(d) of the Act and Rule 17d–1 Under the Act

1. 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, unless the Commission has approved the joint arrangement. Applicants state that the Participating Funds and the Central Funds, by participating in the proposed transactions, and the Adviser, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

2. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the registered investment company's participation in the joint transaction 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 the investment by the Participating Funds in shares of the Central Funds would be on the same basis and no different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet the standards for an order under rule 17d–1.

II. Interfund Transactions

1. Applicants state that the Participating Funds and Central Funds currently rely on rule 17a–7 under the Act to conduct Interfund Transactions. Rule 17a–7 under the Act provides an exemption from section 17(a) for a purchase or sale of certain securities between a registered investment company and an affiliated person (or an affiliated person of an affiliated person), provided that certain conditions are met, including that the affiliation between the registered investment company and the affiliated person (or an affiliated person of the affiliated person) must exist solely by reason of having a common investment adviser, common directors and/or common officers. Applicants state that the Participating Funds and Central Funds may not be able to rely on rule 17a–7 when purchasing or selling portfolio securities to each other, because some of the Participating Funds may own 5% or more of the outstanding voting securities of a Central Fund and, therefore, an affiliation would not exist solely by reason of such Participating Fund and such Central Fund having a common investment adviser, common directors and/or common officers.

2. Applicants request relief under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. The Interfund Transactions for which relief is requested are transactions between Non-Registered Central Funds and Registered Participating Funds or between Registered Central Funds and Non-Registered Participating Funds. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the requirements set forth in rule 17a–(a) through (g) under the Act will be met. Applicants state that the additional affiliation created under sections 2(a)(3)(A) and (B) does not affect the other protections provided by rule 17a–7, including the integrity of the pricing mechanism employed and oversight by each Fund's Board.

Applicants' Conditions

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

1. Shares of the Central Funds sold to and redeemed by the Participating Funds will not be subject to a sales load, redemption fee, asset-based sales charge or service 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 NASD Conduct Rules).

2. Before the next meeting of the Board of a Registered Participating Fund that invests in the Central Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser will provide the Board with such information as the Board may request to evaluate the effect of the investment of Uninvested Cash in the Central Funds upon the direct and indirect compensation to the Adviser. Such information will include specific information regarding the approximate costs to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Registered Participating Fund that can be expected to be invested in the Central Funds. In connection with approving any advisory contract for a Registered Participating Fund, the Registered Participating Fund's Board, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fees charged to the Registered Participating Fund by the Adviser should be reduced to account for reduced services provided to the Registered Participating Fund by the Adviser as a result of the Uninvested Cash being invested in the Central Funds. The minute books of the Registered Participating Fund will record fully the Board's consideration in approving the advisory contact, including the considerations relating to fees referred to above.

3. Each Registered Participating Fund will invest Uninvested Cash in, and hold shares of, the Central Funds only

to the extent that the Registered Participating Fund's aggregate investment of Uninvested Cash in the Central Funds does not exceed the greater of 25% of the Registered Participating Fund's total assets or $10 million.

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

5. Each Fund that may rely on the order shall be advised by the Adviser.

6. No Central Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. The Non-Registered Central Funds will comply with the requirements of sections 17(a), (d), and (e) and 18 of the Act as if the Non-Registered Central Funds were registered open-end investment companies. With respect to all redemption requests made by a Participating Fund, the Non-Registered Central Funds will comply with section 22(e) of the Act. The Adviser will adopt procedures designed to ensure that each Non-Registered Central Fund complies with sections 17(a), (d), and (e), 18 and 22(e) of the Act. The Adviser will also periodically review and update, as appropriate, the procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

8. Each Non-Registered Central Fund will comply with rule 2a–7 under the Act. With respect to each such Non-Registered Central Fund, the Adviser will adopt and monitor the procedures described in rule 2a–7(c)(7) under the Act and will take such other actions as are required to be taken under those procedures. A Registered Participating Fund may only purchase shares of a Non-Registered Central Fund if the Adviser determines on an ongoing basis that the Non-Registered Central Fund is in compliance with rule 2a–7. The Adviser will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and its staff.

9. Each Participating Fund will purchase and redeem shares of any Non-Registered Central Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Non-Registered Central Fund. A separate account will be established in the shareholder records for each Non-Registered Central Fund for the account of each Participating Fund that invests in such Non-Registered Central Fund.

10. To engage in Interfund Transactions, the Funds and the Non-Registered Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers, and/or common directors, solely because a Participating Fund and a Central Fund might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

11. Before a Registered Participating Fund may participate in the Securities Lending Program, a majority of the Board (including a majority of the Independent Trustees) will approve the Registered Participating Fund's participation in the Securities Lending Program. No less frequently than annually, the Board also will evaluate, with respect to each Registered Participating Fund, any securities lending arrangement and its results and determine that any investment of Cash Collateral in the Central Funds is in the best interest of the Registered Participating Fund.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1213 Filed 3–18–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51367; File No. SR–Amex–2005–027]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Use of Certain Consolidated Tape Association Financial Status Indicator Fields and Related Disclosure Obligations

March 14, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on February 25, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II, and III 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.

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

The Amex proposes to utilize certain financial status indicator fields in the Consolidated Tape Association's (''CTA'') Consolidated Tape System (''CTS'') and the Consolidated Quotation System (''CQS'') Low Speed and High Speed Tapes to identify Amex listed companies that: (i) Are noncompliant with continued listing standards and/or (ii) are delinquent with respect to a required federal securities law periodic filing. The Amex also proposes to post a list of issuers subject to each indicator on its Web site. In addition, an indicator will be disseminated over the High Speed Tape with respect to an issuer that has filed or announced intent to file for reorganization relief under the bankruptcy laws (or an equivalent foreign law). Finally, the Amex proposes to amend sections 401 and 1009 of the Amex Company Guide to explicitly clarify that issuance of a press release is required when a listed company is notified that it is noncompliant with the applicable continued listing standards. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

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