

determined in light of those considerations set forth in the application.

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

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

e. The securities lending program for each Affiliated Lending Fund will be monitored on a daily basis by an officer of each Affiliated Lending Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to Affiliated Borrowers 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 the Affiliated Lending Fund's Board, including a majority of the Independent Directors.

15. The total value of securities loaned to any one Borrower on the approved list of Borrowers of securities from an Affiliated Lending Fund will be in accordance with a schedule to be approved by the Board of each Affiliated Lending Fund, but in no event will the total value of securities loaned to any one Affiliated Borrower exceed 10% of the net assets of the Affiliated Lending Fund, computed at market.

16. The Boards of the Affiliated Lending Funds, including a majority of the Independent Directors, (a) will determine no less frequently than quarterly that all transactions with the Affiliated Borrowers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Boards and the conditions of this order if granted and that such transactions were conducted on terms that were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

17. The Affiliated Lending 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 Borrower was fair and reasonable, and that the procedures followed in making such loan were in accordance with the procedures and other undertakings set forth in the application.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-15312 Filed 6-17-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26076; 812-12674]

Franklin Gold and Precious Metals Fund, et al.; Notice of Application

June 12, 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, 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.

APPLICANTS: Franklin Gold and Precious Metal Fund, Franklin Capital Growth Fund, Franklin High Income Trust, Franklin Custodian Funds, Inc., Franklin California Tax-Free Income Fund, Inc., Franklin New York Tax-Free Income Fund, Franklin Federal Tax-Free Income Fund, Franklin Tax-Free Trust, Franklin California Tax-Free Trust, Franklin New York Tax-Free Trust, Franklin Investors Securities Trust, Institutional Fiduciary Trust, Franklin Value Investors Trust, Franklin Managed Trust, Franklin Municipal Securities Trust, Franklin Floating Rate Master Trust, Franklin Strategic Mortgage Portfolio, Franklin Strategic Series, Adjustable Rate Securities Portfolios, Franklin Templeton International Trust, Franklin Global Trust, Franklin Real Estate Securities Trust, Franklin Templeton Global Trust, Franklin Templeton Variable Insurance Products Trust, Franklin Universal Trust, Franklin Multi-Income Trust,

Franklin Templeton Fund Allocator Series, Franklin Money Fund, Franklin Templeton Money Fund Trust, Franklin Federal Money Fund, Franklin Tax-Exempt Money Fund, Franklin Mutual Series Fund Inc., Franklin Floating Rate Trust, The Money Market Portfolios (collectively, the "Franklin Funds"); Templeton Growth Fund, Inc., Templeton Funds, Inc., Templeton Global Smaller Companies Fund, Inc., Templeton Income Trust, Templeton Capital Accumulator Fund (formerly, Templeton Capital Accumulator Fund Inc.), Templeton Global Opportunities Trust, Templeton Institutional Funds, Inc., Templeton Developing Markets Trust, Templeton Global Investment Trust, Templeton Emerging Markets Fund (formerly Templeton Emerging Markets Fund, Inc.), Templeton Global Income Fund, Inc., Templeton Emerging Markets Income Fund, Templeton China World Fund, Inc., Templeton Dragon Fund, Inc., Templeton Russia and East European Fund, Inc. (formerly, Templeton Russia Fund, Inc.) (collectively, the "Templeton Funds") FTI Funds; (the Franklin Funds, the Templeton Funds and the FTI Funds are collectively, together with any other registered management investment company or series thereof advised by an Adviser, as defined below, the "Franklin Templeton Funds"); Franklin Advisers, Inc., Franklin Advisory Services, LLC, Franklin Investment Advisory Services Inc., Franklin Mutual Advisers, LLC, Franklin Private Client Group, Inc., Templeton/Franklin Investment Services Inc., Templeton Investment Counsel, LLC, Franklin Templeton Asset Strategies, LLC, Fiduciary International, Inc., Franklin Templeton Investment Management Limited, Franklin Templeton Investments (Asia) Limited, Franklin Templeton Investments Corp., Templeton Asset Management LTD., Templeton Global Advisors Limited, Fiduciary Investment Management International, Inc., Fiduciary Trust International Limited, FTI Institutional, LLC ("Advisers"), together with any entity controlling, controlled by, or under common control with Advisers that acts in the future as investment adviser for the Franklin Templeton Funds, the Unregistered Funds (as defined below), or a Managed Account (as defined below) (included in the term "Advisers"); the Advisers on behalf of certain private investment companies or series thereof that are excluded from the definition of "investment company" pursuant to section 3(c)(1), section 3(c)(7) or section 3(c)(11) of the 1940 Act for which one of the Advisers

currently or in the future serves as investment adviser or trustee (the "Unregistered Funds"); and the Advisers on behalf of institutional and individual accounts that are not pooled investment vehicles for which one of the Advisers currently or in the future serves as investment adviser (the "Managed Accounts").

SUMMARY OF APPLICATION: The applicants request an order that would permit (a) certain registered management investment companies, Unregistered Funds and Managed Accounts to invest uninvested cash and cash collateral in affiliated registered and unregistered money market funds, and (b) the registered investment companies and certain affiliated entities to continue to engage in purchase and sale transactions involving portfolio securities in reliance on rule 17a-7 under the Act. The order would supersede a prior order.¹ The order also would amend a prior order.²

FILING DATES: The application was filed on October 26, 2001 and amended on October 18, 2002, and June 10, 2003.

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 July 7, 2003, 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 David P. Goss, Esq., Franklin Templeton Investments, One Franklin Parkway, San Mateo, CA 94403-1906.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942-0574 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 at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. The Franklin Templeton Funds are organized as Maryland Corporations, California Corporations, Massachusetts business trusts, or Delaware statutory trusts. The Franklin Templeton Funds are registered under the Act as open-end or closed-end management investment companies. The Advisers are each registered under the Investment Advisers Act of 1940 ("Advisers Act") together with any entity controlling, controlled by and under common control with Advisers that acts in the future as investment adviser for the Franklin Templeton Funds, an Unregistered Fund, as defined below, Managed Account, as defined below, included in the term Advisers.³

2. Certain of the Franklin Templeton Funds or series thereof are money market funds subject to the requirements of rule 2a-7 under the Act ("Registered Money Market Funds"). The Franklin Templeton Funds or series thereof that are not money market funds are the "Registered Funds." Certain of the Unregistered Funds that rely on section 3(c)(1) or 3(c)(7) of the Act also operate as cash management vehicles ("Unregistered Money Market Funds,"⁴ together with the Registered Money Market Funds, the "Money Market Funds"). The Unregistered Money Market Funds will comply with rule 2a-7 under the Act.

3. The Registered Funds, Unregistered Funds and Managed Accounts ("Participating Funds") have, or may be expected to have, cash that has not been invested in portfolio securities ("Uninvested Cash").⁵ Uninvested Cash may result from a variety of sources, including dividends or interest received

on portfolio securities, unsettled securities transactions, reserves held for strategic purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new monies received from investors. Certain of the Registered Participating Funds have the ability to increase their income by participating in a securities lending program ("Securities Lending Program") under which they may lend portfolio securities to registered broker-dealers or other institutional investors deemed by the respective Adviser to be of good standing. The loans are continuously secured by collateral which may include cash ("Cash Collateral," together with Uninvested Cash, "Cash Balances") equal at all times in value to at least the market value of the securities loaned.

4. Applicants request an order of the Commission to permit: (i) The Participating Funds to use their Cash Balances to purchase shares of one or more of the Money Market Funds; (ii) the Money Market Funds to sell their shares to, and purchase (redeem) such shares from, the Participating Funds; and (iii) the Advisers to effect the above transactions (the "Proposed Transactions"). The requested order also would permit the Participating Funds and the Money Market Funds to continue to engage in interfund purchase and sale transactions ("Interfund Transactions").

Applicants' Legal Analysis

I. Investment of Cash Balances by the Participating Funds in the Money Market Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company, and no investment company may inquire 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

¹ *Franklin Gold Fund, et. al.*, Investment Company Act Release Nos. 23633 (Jan. 5, 1999)(Notice) and 23675 (Feb. 2, 1999)(Order).

² *Franklin Templeton Fund Manager, et. al.*, Investment Company Act Release Nos. 21964 (May 20, 1996)(Notice) and 22022(June 17, 1996)(Order) (the "Fund of Funds Order").

³ All existing Advisers and Franklin Templeton Funds that currently intend to rely on the requested order are named as applicants. Any other entity will not rely on the relief requested except in accordance with the terms and conditions in the application.

⁴ In addition to cash management vehicles that are excluded from the definition of an investment company pursuant to section 3(c)(1) or section 3(c)(7) of the 1940 Act, Unregistered Money Market Funds may include one or more entities that are organized offshore and offer their shares privately to U.S. investors ("Offshore Money Market Funds," included in the term "Unregistered Money Market Funds"). Any Offshore Money Market Fund will have as its investment adviser or trustee one of the Advisers.

⁵ The Participating Funds that are Registered Funds are the "Registered Participating Funds." The Participating Funds that are Unregistered Funds and Management Accounts are the "Unregistered Participating Funds."

owned by investment companies. Any entity that is excluded from the definition of investment company under 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 entity of securities of a registered investment 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 Money Market 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 Money Market Funds will not exceed 25% of the Registered Participating Fund's total assets at any time. Applicants also request relief to permit the Registered Money Market Funds to sell their securities to the Participating Funds in excess of the percentage limitations in section 12(d)(1)(B).⁶

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 because each Registered Money Market Fund maintains a highly liquid portfolio and the Advisers will serve as investment advisers to both the Participating Funds and the Money Market Funds, the Advisers will not be susceptible to undue influence regarding their management of the Registered Money Market Funds due to threatened redemptions or loss of fees. Applicants state that the proposed arrangement will not result in inappropriate layering of fees. Shares of the Money Market Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers Inc., (a "Service Fee"). If a Money Market Fund offers more than one class of shares, a Registered

Participating Fund will invest in the class with the lowest expense ratio at the time of investment. Before the next meeting of the board of directors or trustees ("Board") of the Registered Participating Fund that invests in the Money Market 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 specific information regarding the approximate cost to the Adviser for, 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 Money Market Fund. Before approving any advisory contract under section 15, the Board of the Registered Participating Fund, including a majority who are not "interested persons," as that term is defined in section 2(a)(19) of the Act ("Disinterested Directors"), 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 Uninvested Cash being invested in the Money Market Funds. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations 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 or, any person 5% or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote by such 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 Advisers serve, or will serve, as investment adviser or trustee exercising investment discretion for the Participating Funds and Money Market Funds, they may be deemed to be under common control and therefore, affiliated persons of each other. In addition, if a Participating Fund purchases more than

5% of the voting securities of a Money Market Fund, the Money Market 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 Money Market 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 any person 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 Money Market Funds by the Participating Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that the consideration paid and received on the sale and redemption of shares of the Money Market Funds will be based on the net asset value per share of the Money Market Funds. Applicants state that the Registered Participating Funds will retain their ability to invest Cash Balances directly in money market instruments and other short-term obligations as authorized by their respective investment objectives and policies. Applicants represent that a Money Market Fund reserves the right to discontinue selling shares to any of the Participating Funds if the Money Market Fund's Board determines that such sale would adversely affect the Money Market 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 Money

⁶ Applicants also seek relief to allow the Registered Participating Funds to acquire shares of an offshore Money Market Fund in excess of the limits in section 12(d)(1)(A) of the Act.

Market Funds, by participating in the proposed transactions, and the Advisers 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 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 submit that the Proposed Transactions meet the standards for an order under rule 17d-1.

II. Interfund Transactions

1. Applicants state that they 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 registered investment companies that are affiliated persons (or an affiliated person of an affiliated person), or between a registered investment company, and a person that is an affiliated person of such company (or an affiliated person of such person) solely by reason of having a common investment adviser, common officers and/or common directors or trustees. Applicants state that the Participating Funds and Money Market 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 Money Market Fund and, therefore, an affiliation would not exist solely by reason of having a common investment adviser, common officers and/or common directors or trustees.

2. Applicants request relief under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the Funds will comply with rule 17a-7 under the Act in all respects, other than the requirement that the participants be affiliated solely by reason of having a common investment adviser, common directors and/or common officers. Applicants state that by complying with the conditions of Rule 17a-7, the interests of the shareholders of the Registered Participating Funds and the Registered Money Market Funds are protected. Thus, the Applicants submit that the Interfund Transactions are reasonable

and fair, do not involve overreaching, and will be consistent with the purposes of the Act.

Applicants' Conditions

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

1. The shares of the Money Market Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, asset-based distribution fee under a plan adopted in accordance with Rule 12b-1, or Service Fee.

2. Before the next meeting of the Board of the Registered Participating Fund that invests in the Money Market Fund is held for the purpose of voting on an advisory contract pursuant to section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser for, 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 Money Market Funds. Before approving any advisory contract pursuant to section 15 of the Act, the Board of the Registered Participating Fund, including a majority of the Disinterested Directors, 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 Uninvested Cash being invested in the Money Market Funds. The minute books of Registered Participating Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Registered Participating Fund's aggregate investment of Uninvested Cash in the Money Market Funds will not exceed 25% of the Registered Participating Fund's total assets. For purposes of this limitation, each Registered Participating Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with the investment policies and restrictions of each Registered Participating Fund as set forth in its registration statement.

5. Each Registered Fund and Managed Account that may rely on the order shall be advised by an Adviser. Each Unregistered Fund shall be advised by, or have as its trustee, an Adviser.

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

7. The Unregistered Money Market Funds will comply with the requirements of sections 17(a), (d), and (e), and 18 of the 1940 Act. With respect to all redemption requests made by a Participating Fund, the Unregistered Money Market Funds will comply with section 22(e) of the Act. The Advisers will adopt procedures designed to ensure that each Unregistered Money Market Fund complies with sections 17(a), (d), (e), 18 and 22(e) of the Act. The Advisers also will periodically review and update as appropriate the procedures, and will maintain books and records describing such procedures, and will maintain books and records describing such procedures, and will 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 Unregistered Money Market Fund will comply with rule 2a-7. With respect to each Unregistered Money Market Fund, the Advisers 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 Participating Fund may only purchase shares of an Unregistered Money Market Fund if the Adviser determines on an ongoing basis that the Unregistered Money Market Fund is in compliance with rule 2a-7. The Advisers will preserve for a period of 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 Unregistered Money Market 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 Unregistered Money Market Fund. A separate account will be established in the shareholder records of each Unregistered Money Market Fund for the account of each Participating Fund

that invests in such Unregistered Money Market Fund.

10. To engage in Interfund Transactions, the Registered Funds, Unregistered Funds, Managed Accounts and Money Market 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 or trustees, solely because a Participating Fund and a Money Market Fund might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

11. The net asset value per share with respect to shares of an Unregistered Money Market Fund will be determined separately for each Unregistered Money Market Fund by dividing the value of the assets belonging to that Unregistered Money Market Fund, less the liabilities of that Unregistered Money Market Fund, by the number of shares outstanding with respect to that Unregistered Money Market Fund.

12. Before a Registered Participating Fund may participate in the Securities Lending Program, a majority of the Board (including a majority of the Disinterested Directors) 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 in Cash Collateral in the Money Market Funds is in the best interest of the Registered Participating Fund.

Condition 2 to the Fund-of-Funds Order is amended to read as follows: "No Underlying Portfolio 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 the Underlying Portfolio other than a money market fund acquires securities of another registered or unregistered investment company pursuant to exemptive relief from the Commission permitting the Underlying Portfolio to purchase securities of an affiliated registered or unregistered money market fund for short-term cash management purposes.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-15354 Filed 6-17-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26075; 812-12779]

American Performance Funds, et al.; Notice of Application

June 12, 2003.

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

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "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: Applicants request an order that would permit certain registered management investment companies to invest uninvested cash and cash collateral in one or more affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act. Prior to relying on the requested order, Applicants would cease relying on a prior order.¹

APPLICANTS: American Performance Funds, AmSouth Funds, BNY Hamilton Funds, Inc. ("BNY Hamilton Funds"), Citizens Funds, Fifth Third Funds, HSBC Advisor Funds Trust, HSBC Investor Funds and HSBC Investor Portfolios (collectively, the "HSBC Funds"), Legacy Funds Group ("Legacy Funds"), Mercantile Funds, Inc. ("Mercantile Funds"), Old Westbury Funds, Inc. ("Old Westbury Funds"),

¹ On February 19, 2000, the Commission issued an order amending prior orders under Sections 6(c) and 17(b) of the Act that exempted certain Applicants and certain other entities who are not parties to the application from the provisions of Section 12(d)(1)(A) and Section 17(a) of the Act and that permitted pursuant to rule 17d-1, certain joint transactions in accordance with Section 17(d) and rule 17d-1. See Investment Company Act Rel. Nos. 24274 (Feb. 1, 2000) (notice) and 24325 (Feb. 19, 2000) (order); Investment Company Act Rel. Nos. 23962 (Aug. 23, 1999) (notice) and 24021 (Sept. 21, 1999) (order); Investment Company Act Rel. Nos. 23393 (Aug. 18, 1998) (notice) and 23436 (Sept. 15, 1998); Investment Company Act Rel. Nos. 22636 (April 24, 1997) (notice) and 22677 (May 20, 1997) (order); Investment Company Act Rel. Nos. 19695 (Sept. 9, 1993) and 19759 (Oct. 5, 1993) (order).

Performance Funds Trust ("Performance Funds"), The Victory Portfolios, Vintage Mutual Funds, BOk Investment Advisers, Inc. ("BOk") (formerly, Investment Concepts, Inc.), AmSouth Investment Management Company, LLC ("AmSouth"), The Bank of New York ("BNY"), Citizens Advisers, Inc. ("Citizens Advisers"), Fifth Third Asset Management, Inc. ("Fifth Third"), HSBC Asset Management (Americas) Inc. ("HSBC"), First Financial Capital Advisors LLC ("First Financial"), Bessemer Investment Management LLC ("Bessemer"), Mercantile Capital Advisors, Inc. ("Mercantile"), Trustmark Investment Advisors, Inc. (formerly, Trustmark Financial Services, Inc.) ("Trustmark"), Victory Capital Management, Inc. ("Victory") and Investors Management Group, Ltd. ("Investors Management Group").

Filing Dates: The application was filed on February 1, 2002 and was amended on June 9, 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 July 7, 2003, 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 Ryan M. Louvar, Esq., BISYS, 60 State Street, Suite 1300, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942-0527 or Annette M. 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).