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

Nancy M. Morris,

Secretary.

[FR Doc. E6–6660 Filed 5–2–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27304; 812–13113]

Forum Funds, et al.; Notice of Application

April 26, 2006.

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 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

Summary of the Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Forum Funds (''Trust''), and Brown Investment Advisory Incorporated (''Advisor'').

Filing Dates: The application was filed on July 29, 2004, and amended on February 13, 2006 and April 25, 2006.

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 22, 2006 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: Anthony C.J. Nuland, Seward & Kissel LLP, 1200 G Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Janet M. Grossnickle, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

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, 100 F Street, NE., Washington, DC 20549–0104 (telephone (202) 551–8090).

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust currently is comprised of twenty-eight series (''Funds''), each with a separate investment objective, policy, and restrictions.[1] The Advisor, a Maryland corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to nine of the existing Funds (''Series'') pursuant to investment advisory agreements (''Advisory Agreements''). Each Advisory Agreement has been approved by the Trust's board of trustees (the ''Board''),[2] including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Advisor (''Independent Trustees''), as well as by the shareholders of each Series.

2. Applicants propose to establish a program in which the Advisor, in its capacity as investment adviser to each Series, oversees the portfolio management of a Series by its subadvisers (each, a ''Subadvisor''). The Advisor would provide overall investment management services to each Series, including Subadvisor monitoring and evaluation and would be responsible for recommending the hiring, termination and replacement of Subadvisors to the Board. All subadvisory agreements (''Subadvisory Agreements'') will be approved by the Board, including a majority of the Independent Trustees. Under each Subadvisory Agreement, the Subadvisor would determine which securities will be purchased and sold for a Series' investment portfolio or for a portion of the portfolio. Each Subadvisor will be registered under the Advisers Act and paid by the Advisor out of the fee it receives from the Series under its Advisory Agreement. Applicants request an order to permit the Advisor, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadvisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Series or of the Advisor, other than by reason of serving as a Subadvisor to one or more of the Series (''Affiliated Subadvisor'').

3. Applicants also request an exemption from the various disclosure provisions described below that may require a Series to disclose fees paid by the Advisor to each Subadvisor. An exemption is requested to permit each Series, in the event that a Series has more than one Subadvisor, to disclose (both as a dollar amount and as a percentage of a Series' net assets): (a) The aggregate fees paid to the Advisor and Affiliated Subadvisors; and (b) aggregate fees paid to Subadvisors other than Affiliated Subadvisors (''Aggregate Fee Disclosure''). For any Series that employs an Affiliated Subadvisor, the Series will provide separate disclosure of any fees paid to such Affiliated Subadvisor.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an

[1] Applicants also request relief with respect to future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Advisor or an entity controlling, controlled by, or under common control with the Advisor; (b) uses the multi-manager structure as described in the application; and (c) complies with the terms and conditions of the application (included in the term ''Series''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. All references to the term ''Advisor'' herein include (a) the Advisor or its successor in interest (limited to any entity resulting from a reorganization of the Advisor into another jurisdiction or a change in the type of business organization), and (b) an entity controlling, controlled by, or under common control with the Advisor. If the name of any Series contains the name of a Subadvisor (as defined below), the name of the Advisor will precede the name of the Subadvisor.

[2] With respect to a Series not part of the Trust, the term ''Board'' refers to the board of directors/trustees of the relevant Series.

investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) 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 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. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that by investing in a Series, shareholders are in effect hiring the Advisor to manage the Series' assets through monitoring and evaluation of Subadvisors rather than by hiring the Advisor's own employees to directly manage assets, and that shareholders will expect that the Advisor will oversee its Subadvisors and recommend whether to hire, terminate or replace such Subadvisors when deemed appropriate. Applicants believe that permitting the Advisor to hire Subadvisors without incurring the unnecessary delay and expense of obtaining shareholder approval of each Subadvisory Agreement is appropriate in the interest of the Series' shareholders and will allow each Series to potentially operate more efficiently. Applicants note that the Advisory Agreements will continue to be subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that, because the Advisor compensates the Subadvisors out of the fee it receives from each Series for advisory services, disclosure of the individual fees that the Advisor would pay to each Subadvisor in a co-subadvisory or multi-subadvisory situation does not serve any meaningful purpose. Applicants further assert that some Subadvisors use a ''posted'' rate schedule to set their fees. Applicants state that while Subadvisors are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will encourage potential Subadvisors to negotiate lower subadvisory fees with the Advisor, the benefits of which may be passed on to Series shareholders.

Applicants' Conditions

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

1. The Advisor will provide general investment management services to each Series, including overall supervisory responsibility for the general management and investment of the Series' assets and, subject to review and approval of the Board, will: (i) Set the Series' overall investment strategies; (ii) evaluate, select and recommend Subadvisors to manage all or a portion of a Series' assets; (iii) allocate and, when appropriate, reallocate a Series' assets among multiple Subadvisors; (iv) monitor and evaluate Subadvisor performance; and (v) implement procedures reasonably designed to ensure that Subadvisors comply with the relevant Series' investment objective, policies and restrictions.

2. Before a Series may rely on the order requested herein, the operation of the Series in the manner described in this application will be approved by a majority of the Series' outstanding voting securities as defined in the Act, or, in the case of a Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 3 below, by the initial shareholder before such Series' shares are offered to the public.

3. The prospectus for each Series will disclose the existence, substance and effect of any order granted pursuant to this application. In addition, each Series will hold itself out to the public as employing the manager of managers structure described in this application. The prospectus will prominently disclose that the Advisor has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisors and recommend their hiring, termination, and replacement.

4. Within 90 days of the hiring of any new Subadvisor, the shareholders of the relevant Series will be furnished all information about the new Subadvisor that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Subadvisor. To meet this obligation, the Advisor will provide shareholders of the applicable Series, within 90 days of the hiring of a new Subadvisor, with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

5. No trustee or officer of the Trust or a Series or director or officer of the Advisor will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadvisor except for: (i) ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadvisor or an entity that controls, is controlled by or is under common control with a Subadvisor.

6. At all times, at least a majority of the Board will be independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees. The Board also will satisfy the fund governance standards defined in rule 0–1(a)(7) under the Act.

7. Whenever a Subadvisor change is proposed for a Series with an Affiliated Subadvisor, the Series' Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Series and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Subadvisor derives an inappropriate advantage.

8. Each Series in its registration statement will disclose the Aggregate Fee Disclosure.

9. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act,

will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

10. The Advisor will provide the Board, no less frequently than quarterly, with information about the Advisor's profitability on a per Series basis. This information will reflect the impact on profitability of the hiring or termination of any Subadvisor during the applicable quarter.

11. Whenever a Subadvisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the Advisor's profitability.

12. The Advisor will not enter into a Subadvisory Agreement with any Affiliated Subadvisor, without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Series.

13. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

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

Nancy M. Morris,

Secretary.

[FR Doc. E6–6638 Filed 5–2–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8681; 34–53737/April 28, 2006]

Order Making Fiscal Year 2007 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b), and 31(c) of the Securities Exchange Act of 1934

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 (''Securities Act'') requires the Commission to collect fees from issuers on the registration of securities.[1] Section 13(e) of the Securities Exchange Act of 1934 (''Exchange Act'') requires the Commission to collect fees on specified repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on proxy solicitations and statements in corporate control transactions.[3] Finally, Sections 31(b) and (c) of the Exchange Act require national securities exchanges and national securities associations, respectively, to pay fees to the Commission on transactions in specified securities.[4]

The Investor and Capital Markets Fee Relief Act (''Fee Relief Act'')[5] amended Section 6(b) of the Securities Act and Sections 13(e), 14(g), and 31 of the Exchange Act to require the Commission to make annual adjustments to the fee rates applicable under these sections for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates under these sections for fiscal year 2012 and beyond.[6]

II. Fiscal Year 2007 Annual Adjustment to the Fee Rates Applicable Under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act

Section 6(b)(5) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b) of the Securities Act in each of the fiscal years 2003 through 2011.[7] In those same fiscal years, Sections 13(e)(5) and 14(g)(5) of the Exchange Act require the Commission to adjust the fee rates under Sections 13(e) and 14(g) to a rate that is equal to the rate that is applicable under Section 6(b). In other words, the annual adjustment to the fee rate under Section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act.

Section 6(b)(5) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2007. Specifically, the Commission must adjust the fee rate under Section 6(b) to a ''rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2007], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target offsetting collection amount for [fiscal year 2007].'' That is, the adjusted rate is determined by dividing the ''target offsetting collection amount'' for fiscal year 2007 by the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2007.

Section 6(b)(11)(A) specifies that the ''target offsetting collection amount'' for fiscal year 2007 is $214,000,000.[8] Section 6(b)(11)(B) defines the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2007 as ''the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal year 2007] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget * * *.''

To make the baseline estimate of the aggregate maximum offering price for fiscal year 2007, the Commission is using the same methodology it developed in consultation with the Congressional Budget Office (''CBO'') and Office of Management and Budget (''OMB'') to project aggregate offering price for purposes of the fiscal year 2006 annual adjustment. Using this methodology, the Commission determines the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2007 to be $6,974,885,248,909.[9] Based on this estimate, the Commission calculates the annual adjustment for fiscal 2007 to be $30.70 per million. This adjusted fee rate applies to Section 6(b) of the Securities Act, as well as to Sections 13(e) and 14(g) of the Exchange Act.

[1] 15 U.S.C. 77f(b).

[2] 15 U.S.C. 78m(e).

[3] 15 U.S.C. 78n(g).

[4] 15 U.S.C. 78ee(b) and (c). In addition, Section 31(d) of the Exchange Act requires the Commission to collect assessments from national securities exchanges and national securities associations for round turn transactions on security futures. 15 U.S.C. 78ee(d).

[5] Pub. L. 107–123, 115 Stat. 2390 (2002).

[6] *See* 15 U.S.C. 77f(b)(5), 77f(b)(6), 78m(e)(5), 78m(e)(6), 78n(g)(5), 78n(g)(6), 78ee(j)(1), and 78ee(j)(3). Section 31(j)(2) of the Exchange Act, 15 U.S.C. 78ee(j)(2), also requires the Commission, in specified circumstances, to make a mid-year adjustment to the fee rates under Sections 31(b) and (c) of the Exchange Act in fiscal years 2002 through 2011.

[7] The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the ''target offsetting collection amount'' specified in Section 6(b)(11)(A) for that fiscal year.

[8] Congress determined the target offsetting collection amounts by applying reduced fee rates to the CBO's January 2001 projections of the aggregate maximum offering prices for fiscal years 2002 through 2011. In any fiscal year through fiscal year 2011, the annual adjustment mechanism will result in additional fee rate reductions if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too high.

[9] Appendix A explains how we determined the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2007 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2007 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2007.