

SATURDAY–SUNDAY, [Month, Day, Year]

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BILLING CODE 8010-01-P

[Investment Company Act Release No. 28383; 812-13355]

September 19, 2008.

AGENCY: Securities and Exchange Commission (the “Commission”).

ACTION: Notice of an application for an order under sections 6(c), 12(d)(1)(J), and 57(c) of the Investment Company Act of 1940 (“Act”) granting exemptions from sections 12(d)(1)(A) and (C), 18(a), 21(b), 57(a)(1)–(a)(3), and 61(a) of the Act; under section 57(i) of the Act and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 57(a)(4) of the Act; and under section 12(h) of the Securities Exchange Act of 1934 (“Exchange Act”) granting an exemption from section 13(a) of the Exchange Act.

SUMMARY OF APPLICATION: Applicants, Triangle Capital Corporation (“Triangle”), Triangle Mezzanine Fund, LLLP (“Triangle SBIC”), and New Triangle GP, LLC (“General Partner”), request an order permitting a business development company (“BDC”) and its wholly-owned small business investment company (“SBIC”) subsidiary to (1) engage in certain transactions that otherwise would be permitted if the BDC and its SBIC subsidiary were one company, (2) adhere to a modified asset coverage requirement, and (3) file certain reports on a consolidated basis.

FILING DATES: The application was filed on January 3, 2007 and amended on November 5, 2007, and September 16, 2008.

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 pm on October 10, 2008, 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, c/o Garland S. Tucker III, Triangle Capital Corporation, 3700 Glenwood Avenue, Suite 530, Raleigh, NC 27612.

FOR FURTHER INFORMATION CONTACT:
Courtney S. Thornton, Senior Counsel,
at (202) 551-6812, 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 Desk,

100 F Street, NE., Washington, DC
20549-0102 (tel. 202-551-5850).

Applicants' Representations

1. Triangle, a Maryland corporation organized in October 2006, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a BDC under the Act.¹ In addition, Triangle will elect to be treated for tax purposes as a regulated investment company ("RIC") as defined under Subchapter M of the Internal Revenue Code of 1986, as amended. Triangle operates as a specialty finance company that provides customized financing solutions to lower middle market companies that have annual revenues between \$10 and \$100 million. Triangle's investment objective is to seek attractive returns by generating current income from debt investments and capital appreciation from equity related investments.

2. Triangle has a seven member board of directors ("Board"), four of whom are not "interested persons" of Triangle within the meaning of section 2(a)(19) of the Act. Triangle is internally managed by its executive officers under the supervision of the Board. As a result, Triangle does not pay external investment advisory fees, but instead incurs operating costs associated with employing investment and portfolio management professionals.

3. Triangle SBIC, a North Carolina limited liability limited partnership, is an SBIC licensed by the Small Business Administration ("SBA") to operate under the Small Business Investment Act of 1958. Triangle SBIC filed a registration statement on Form N-5 with the Commission and has elected to be regulated as a BDC under the Act. Triangle SBIC has the same investment objectives and strategies as Triangle. Triangle owns a 99.9 percent limited partnership interest in Triangle SBIC, and the General Partner, a wholly-owned subsidiary of Triangle, owns a 0.1 percent general partnership interest in Triangle SBIC. Triangle SBIC, therefore, is functionally a 100 percent owned subsidiary of Triangle, because Triangle and the General Partner own all of the equity and voting interest in Triangle SBIC. Triangle SBIC is consolidated with Triangle for financial reporting purposes. Triangle SBIC has a Board consisting of four persons who are not interested persons of Triangle

SBIC within the meaning of section 2(a)(19) of the Act and three persons who are interested persons of Triangle SBIC.

4. All investments for Triangle SBIC are approved by the investment committee of Triangle SBIC, which is a committee of Triangle SBIC and is subject to approval by the SBA. In addition, Triangle and Triangle SBIC have entered into a management services agreement whereby Triangle provides management services to Triangle SBIC, including prospective investment identification, due diligence and analytical services, preparation of reports, research and economic/statistical data relating to potential and existing investments for use by the Triangle SBIC Board in overseeing the Triangle SBIC investment portfolio, monitoring of existing investments, including enforcement of rights under operative agreements, bookkeeping, accounting and other administrative services, preparation of financial reports and tax returns, preparation of reports filed with the SBA, provision of office space and clerical staff, and maintenance of relationships with professionals retained by Triangle SBIC.

5. The General Partner is a limited liability company organized under the laws of the state of North Carolina. The General Partner has irrevocably delegated its authority to manage the business and affairs of Triangle SBIC to the Triangle SBIC Board. As a consequence, the General Partner's only role is to perform certain ministerial functions that result from decisions made by the Triangle SBIC Board.

Applicants' Legal Analysis

1. Applicants request an order under sections 6(c), 12(d)(1)(f), 57(c) and 57(i) of the Act and rule 17d-1 under the Act granting exemptions from sections 12(d)(1), 18(a), 21(b), 57(a)(1), 57(a)(2), 57(a)(3), 57(a)(4) and 61(a) of the Act to permit Triangle and Triangle SBIC to engage in certain transactions that otherwise would be permitted if Triangle and Triangle SBIC were one company and to permit Triangle to adhere to a modified asset coverage requirement. Applicants also request an exemption under section 12(h) of the Exchange Act for an exemption from section 13(a) of the Exchange Act.

2. Section 12(d)(1)(A) of the Act, made applicable to BDCs by section 60 of the Act, limits the amount of securities a registered investment company or BDC may hold of other investment companies. Section 12(d)(1)(C) of the Act limits the amount of securities of a closed-end investment company that may be acquired by an

investment company. Rule 60a-1 exempts a BDC's acquisition of the securities of a wholly-owned SBIC subsidiary from sections 12(d)(1)(A) and (C). Accordingly, the transfer of assets from Triangle to Triangle SBIC will be exempt from the provisions of sections 12(d)(1)(A) and 12(d)(1)(C) by virtue of rule 60a-1. However, any loans or advances by Triangle SBIC to Triangle might be deemed to violate section 12(d)(1) if the loans or advances are construed as purchases by Triangle SBIC of the securities of Triangle.

3. Applicants request an exemption under section 12(d)(1)(f) from section 12(d)(1) to permit the acquisition by Triangle SBIC of any securities of Triangle representing indebtedness. Section 12(d)(1)(f) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants state that the requested relief meets this standard because Triangle SBIC's wholly-owned subsidiary status and consolidated financial reporting with Triangle will both eliminate the possibility of overreaching and prevent confusion as to the financial status of Triangle to Triangle's stockholders, who are the investors that the Act is intended to protect.

4. Section 18(a) prohibits a registered close-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements of section 18(a)(1)(A) and (B) (with respect to senior securities representing indebtedness).

5. Applicants state that a question exists as to whether Triangle must comply with the asset coverage requirements of section 18(a) on a consolidated basis because Triangle may be deemed to be an indirect issuer of senior securities issued by Triangle SBIC. For Triangle to comply with these asset coverage requirements would mean that, with certain exceptions, Triangle would treat as its own all assets held directly by Triangle and Triangle SBIC and any liabilities of Triangle SBIC, including liabilities of Triangle SBIC with respect to senior securities as to which Triangle SBIC is exempt from the asset coverage requirements of section 18(a)(1)(A) and (B) by virtue of

¹ Section 2(a)(48) of the Act defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

section 18(k). Accordingly, applicants request relief under section 6(c) of the Act from sections 18(a) and 61(a) of the Act to permit Triangle to exclude from its consolidated asset coverage ratio any senior security representing indebtedness that is issued by Triangle SBIC.

6. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if, and to the extent that, 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, without the requested relief from sections 18(a) and 61(a), the ability of Triangle SBIC to obtain the kind of financing that would be available to Triangle if it were to conduct the SBIC operations itself would be restricted. Moreover, the exclusion by Triangle from its consolidated asset coverage ratio of any senior security representing indebtedness that is issued by Triangle SBIC would not harm the public interest because the SBA regulates the capital structure of Triangle SBIC.

7. Sections 57(a)(1) and (2) of the Act generally prohibit, with certain exceptions, sales or purchases of any security or other property between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes a person, directly or indirectly, either controlling, controlled by or under common control with the BDC. Applicants state that Triangle directly owns all of the limited partnership interests in Triangle SBIC and indirectly owns all of the general partnership interests in Triangle SBIC through its 100% ownership of the General Partner. Accordingly, Triangle and Triangle SBIC are related to each other in the manner set forth in section 57(b).

8. Applicants state that there may be circumstances when it is in the interests of Triangle and its stockholders that Triangle SBIC invest in securities of an issuer that may be deemed to be a controlled affiliate of Triangle or that Triangle invest in securities of an issuer that may be deemed to be a controlled affiliate of Triangle SBIC. Applicants therefore request an exemption from sections 57(a)(1) and 57(a)(2) of the Act to permit any transaction solely between Triangle and Triangle SBIC with respect to the purchase or sale of securities or other property. Applicants also seek an exemption from these provisions to allow any transaction involving Triangle and/or Triangle SBIC and portfolio affiliates of either or both of Triangle

and/or Triangle SBIC. Applicants state that the requested relief is intended only to permit Triangle and Triangle SBIC to do that which they otherwise would be permitted to do if they were one company.

9. Section 57(c) provides that the Commission will exempt a proposed transaction from the provisions of section 57(a)(1), (2), and (3) 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 of any person concerned, and the proposed transaction is consistent with the policy of the BDC concerned and the general purposes of the Act.

10. Applicants submit that the requested relief from section 57(a)(1) and (2) meets this standard. Applicants represent that the proposed operation of Triangle and Triangle SBIC as one company will enhance the efficient operations of both companies and allow them to deal with portfolio companies as if Triangle and Triangle SBIC were one company. Applicants contend that the terms of the proposed transactions are reasonable and fair and do not involve overreaching of Triangle or its stockholders by any person, and that the requested order would permit applicants to carry out more effectively their purposes and objectives of investing primarily in small business concerns. Applicants also state that since Triangle SBIC will be a wholly-owned subsidiary of Triangle and no officers or directors of Triangle or Triangle SBIC (or any controlling persons or other "upstream affiliates" of Triangle) will have any prohibited financial interest in the transactions described, there can be no overreaching on the part of any persons in transactions solely between Triangle and Triangle SBIC. Finally, applicants note that the proposed transactions are consistent with the policy of Triangle and Triangle SBIC as specified in filings with the Commission and reports to stockholders, as well as consistent with the policies and provisions of the Act.

11. Section 57(a)(3) of the Act makes it unlawful for certain affiliated persons of a BDC, and certain affiliated persons of those persons, to borrow money or other property from such BDC or from any company controlled by the BDC, except as permitted by section 21(b) or section 62. Section 21(b) of the Act (made applicable to BDCs by section 62) provides that it shall be unlawful for a BDC to lend any money or property, directly or indirectly, to any person that controls or is under common control with the BDC, except for loans to any company that owns all of the

outstanding securities of the BDC (other than directors' qualifying shares).

12. Triangle is an affiliated person of Triangle SBIC by reason of its direct ownership of all of the limited partnership interests in Triangle SBIC and its indirect ownership of all of the general partnership interests in Triangle SBIC through its 100% ownership of the General Partner. Triangle does not directly own all of the outstanding securities of Triangle SBIC because the General Partner holds a 0.1 percent general partnership interest in Triangle SBIC and Triangle SBIC has issued SBA-guaranteed debentures and, in the future, may have other outstanding securities in the form of indebtedness not owned by Triangle. Triangle SBIC is an affiliated person of Triangle because it is deemed to be under the control of Triangle.

13. Applicants state that there may be instances when it would be in the best interests of Triangle and its stockholders for Triangle to make loans to Triangle SBIC or for Triangle SBIC to make loans to Triangle. Applicants note that, in the case of loans from Triangle SBIC to Triangle, the loans would be prohibited by section 21(b) and section 57(a)(3) because the borrower controls the lender and the lender may have outstanding securities not owned by the borrower. Accordingly, applicants request an order under section 6(c) to exempt the lending of money or other property by Triangle SBIC to Triangle and by Triangle to Triangle SBIC from the provisions of section 21(b). Applicants argue that because these transactions are solely between Triangle and Triangle SBIC, its wholly-owned subsidiary, they will have no substantive economic effect and there will be no basis for overreaching or harm to the public interest. Applicants also request an order under section 57(c) to exempt the borrowing of money or property by Triangle from Triangle SBIC from the provisions of section 57(a)(3). Applicants submit that the requested relief meets the standards of section 57(c).

14. Section 17(d) of the Act and rule 17d-1 under the Act (made applicable to BDCs by section 57(i)) prohibit affiliated persons of a registered investment company, or an affiliated person of such person, acting as principal, from participating in any joint transaction or arrangement in which the registered company or a company it controls is a participant, unless the Commission has issued an order authorizing the arrangement. Section 57(a)(4) of the Act imposes substantially the same prohibitions on joint transactions involving any BDC and an

affiliated person of such BDC, or an affiliated person of such affiliated person, as specified in section 57(b) of the Act. Section 57(i) of the Act provides that rules and regulations under section 17(d) of the Act will apply to transactions subject to section 57(a)(4) in the absence of rules under that section. The Commission has not adopted rules under section 57(a)(4) with respect to joint transactions and, accordingly, the standards set forth in rule 17d-1 govern applicants' request for relief.

15. Applicants request relief under section 57(i) and rule 17d-1 to permit any transaction solely between Triangle and Triangle SBIC with respect to any transfer of assets to Triangle SBIC or operations thereafter, and any transaction involving investments by Triangle or Triangle SBIC in portfolio companies in which either is or is proposed to become an investor, but only to the extent that the transaction would not be prohibited if Triangle SBIC were deemed to be part of Triangle.

16. In determining whether to grant an order under section 57(i) and rule 17d-1, the Commission considers whether the participation of the BDC in the joint transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants note that the proposed transactions are consistent with the policy and provisions of the Act and will enhance the interests of Triangle's stockholders while retaining for them the important protections afforded by the Act. In addition, because the joint participants will conduct their operations as though they comprise one company, the participation of one will not be on a basis different from or less advantageous than the others. Accordingly, applicants believe that the standard for relief under section 57(i) and rule 17d-1 is satisfied.

17. Section 54 of the Act provides that a closed-end company may elect BDC treatment under the Act if the company has either a class of equity securities registered under section 12 of the Exchange Act or has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities. Section 12(g) of the Exchange Act requires issuers with specified assets and a specified number of security holders to register under the Exchange Act. As a BDC, Triangle has registered its common stock under section 12(b) of the Exchange Act. In order to elect BDC treatment, Triangle SBIC has voluntarily registered its

securities under the Exchange Act, even though it is not required to do so by section 12(g) of the Exchange Act.

18. By filing a registration statement under section 12 of the Exchange Act, absent an exemption, Triangle SBIC would be required by section 13(a) of the Exchange Act to file periodically with the Commission, even though Triangle SBIC will have only one equity holder. Accordingly, applicants request an order under section 12(h) of the Exchange Act exempting Triangle SBIC from the reporting requirements of section 13(a) of the Exchange Act to permit it to file consolidated reports with Triangle.

19. Section 12(h) of the Exchange Act provides that the Commission may exempt an issuer from section 13 of the Exchange Act if the Commission finds that by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. Triangle SBIC will have only one investor, which is itself a reporting company, and no public investors. There will be no trading in Triangle SBIC securities, so no public interest or investor protective purpose will be served by separate Triangle SBIC reporting. Further, applicants state that the nature and extent of Triangle SBIC's activities are such that its activities will be fully reported through consolidated reporting in accordance with normal accounting rules. Accordingly, applicants believe that the requested exemption meets the standards of section 12(h) of the Exchange Act.

Applicants' Conditions

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

A. Capital Structure Conditions

1. Triangle will at all times own and hold, beneficially and of record, all of the outstanding limited partnership interests in Triangle SBIC and all of the outstanding membership interests in the General Partner, or otherwise own and hold beneficially all of the outstanding voting securities and other equity interests in Triangle SBIC.

2. Triangle SBIC will have investment policies not inconsistent with those of Triangle, as set forth in Triangle's registration statement.

3. No person shall serve as a member of the Board of Triangle SBIC unless such person shall also be a member of the Board of Triangle. The Board of

Triangle SBIC will be appointed by the equity owners of Triangle SBIC.

4. Triangle will not itself issue or sell any senior security, and Triangle will not cause or permit Triangle SBIC to issue or sell any senior security of which Triangle or Triangle SBIC is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that immediately after the issuance or sale of any such notes or evidence of indebtedness by either Triangle or Triangle SBIC, Triangle and Triangle SBIC on a consolidated basis, and Triangle individually, shall have the asset coverage required by section 18(a) (as modified by section 61(a)), except that, in determining whether Triangle and Triangle SBIC on a consolidated basis have the asset coverage required by section 61(a), any borrowings by Triangle SBIC shall not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities.

5. Triangle will acquire securities of Triangle SBIC representing indebtedness only if, in each case, the prior approval of the SBA has been obtained. In addition, Triangle and Triangle SBIC will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of the SBA has been obtained.

B. Consolidated Reporting

1. Triangle will: (a) File with the Commission, on behalf of itself and Triangle SBIC, all information and reports required to be filed with the Commission under the Exchange Act and other applicable federal securities laws, including information and financial statements prepared solely on a consolidated basis as to Triangle and Triangle SBIC, such information and reports to be in satisfaction of the separate reporting obligations of Triangle SBIC; and (b) provide to its stockholders such information and reports required to be disseminated to Triangle's stockholders, including information and financial statements prepared solely on a consolidated basis as to Triangle and Triangle SBIC, such reports to be in satisfaction of the separate reporting obligations of Triangle SBIC. Notwithstanding anything in this condition, Triangle will not be relieved of any of its reporting obligations including, but not limited to, any consolidating statements setting forth the individual statements of Triangle SBIC required by rule 6-03(c) of Regulation S-X.

2. Triangle and Triangle SBIC may file on a consolidated basis pursuant to the

above condition only so long as the amount of Triangle's total consolidated assets invested in assets other than (a) securities issued by Triangle SBIC or (b) securities similar to those in which Triangle SBIC invests, does not exceed 10%.

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

Jill M. Peterson,
Assistant Secretary.

[FR Doc. E8-22508 Filed 9-24-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28382; 812-13514]

Trust for Professional Managers, et al.; Notice of Application

September 19, 2008.

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

ACTION: Notice of an application 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 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: Trust for Professional Managers (the "Trust") and Ascentia Capital Partners, LLC (the "Adviser").

FILING DATES: The application was filed on March 31, 2008, and amended on August 14, 2008. 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 October 14, 2008, 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, 615 East Michigan Street, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Attorney Adviser, at (202) 551-6826, 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 Room, 100 F Street, NE, Washington, DC 20549-1520 (telephone (202) 551-5850).

Applicants' Representations

1. The Trust, a Delaware statutory trust organized as a series investment company, is registered under the Act as an open-end management investment company and currently offers 22 series, one of which, Ascentia Alternative Strategies Fund, is advised by the Adviser (the "Fund").¹ The Adviser, a limited liability company organized under Nevada law, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"), and serves as investment adviser to the Fund under an investment advisory agreement with the Trust ("Advisory Agreement") that has been approved by the shareholders of the Fund and the Trust's board of trustees ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of either the Trust or the Adviser ("Independent Trustees").

2. Under the terms of the Advisory Agreement, the Adviser provides the

¹ Applicants request relief with respect to existing and 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 Adviser or a person controlling, controlled by, or under common control with the Adviser or its successors; (b) uses the management structure described in the application; and (c) complies with the terms and conditions of the application (collectively, the "Funds"). For purposes of the requested order, "successor" is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser or the name of the entity controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Subadviser.

Fund with overall management services and continuously reviews, supervises and administers the Fund's investment program, subject to the supervision of, and policies established by, the Board. For the investment management services it provides to the Fund, the Adviser receives the fee specified in the Advisory Agreement from the Fund. The Advisory Agreement also permits the Adviser, subject to the approval of the Board and Fund shareholders, to enter into investment subadvisory agreements ("Subadvisory Agreements") with one or more subadvisers ("Subadvisers"). The Adviser has entered into Subadvisory Agreements with various Subadvisers to provide investment advisory services to the Fund. Each Subadviser is, and every future Subadviser will be, registered as an investment adviser under the Advisers Act. The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, retention or termination. Subadvisers recommended to the Board by the Adviser are selected and approved by the Board, including a majority of the Independent Trustees. Each Subadviser has discretionary authority to invest the assets or a portion of the assets of a particular Fund. The Adviser compensates each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or of the Adviser, other than by reason of serving as a Subadviser to one or more Funds ("Affiliated Subadviser").

4. Applicants also request an exemption from the various disclosure provisions described below that may require the Funds to disclose fees paid by the Adviser to each Subadviser. An exemption is requested to permit the Trust to disclose for each Fund (as both a dollar amount and as a percentage of the Fund's net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Subadviser; and (b) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers ("Aggregate Fee Disclosure"). Any Fund that employs an Affiliated Subadviser will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for