

For the Nuclear Regulatory Commission.

**John P. Boska,**

Senior Project Manager, Plant Licensing  
Branch I-1, Division of Operating Reactor  
Licensing, Office of Nuclear Reactor  
Regulation.

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## POSTAL REGULATORY COMMISSION

[Docket Nos. CP2009-46 and CP2009-47;  
Order No. 249]

### New Competitive Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add two additional Global Plus 1 contracts to the Competitive Product List. This notice addresses procedural steps associated with these filings.

**DATES:** Comments are due July 23, 2009.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202-789-6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Notice of Filing
- III. Ordering Paragraphs

#### I. Background

On July 13, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3633 and 39 CFR 3015.5, announcing that it has entered into two additional Global Plus 1 contracts, which it states fits within the previously established Global Plus Contracts product.<sup>1</sup> The Postal Service states that the instant contracts are functionally equivalent to previously submitted Global Plus 1 contracts, are filed in accordance with Order No. 85, and are supported by Governors' Decision No. 08-8 filed in Docket No. CP2008-8.<sup>2</sup> Notice at 1.

The Notice also states that in Docket No. CP2008-8, the Governors have established prices and classifications for competitive products not of general applicability for Global Plus Contracts.<sup>3</sup>

<sup>1</sup> Notice of the United States Postal Service of Filing Two Functionally Equivalent Global Plus 1 Contracts Negotiated Service Agreements, July 13, 2009 (Notice).

<sup>2</sup> See Docket No. CP2008-8 through CP2008-10, PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, June 27, 2008.

<sup>3</sup> See Docket No. CP2008-8, Notice of United States Postal Service of Governors' Decision

The Postal Service states that the instant contracts are the immediate successor contracts to those in Docket Nos.

CP2008-9 and CP2008-10, both of which are to expire soon, which the Commission found to be functionally equivalent in Order No. 85.

The Postal Service contends that the instant contracts should be included within the Global Plus 1 product on the Competitive Product List. *Id.*

In support, the Postal Service has also filed redacted versions of each contract and related materials as Attachments 1-A and 1-B. Redacted versions of the certified statements required by 39 CFR 3015.5 are included as Attachments 2-A and 2-B, respectively. The Postal Service states that the contracts should be included within the Global Plus 1 product and requests that the instant contracts be considered the "baseline contracts for future functional equivalency analyses concerning this product." *Id.* at 2.

*The instant contracts.* The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. The contracts become effective August 1, 2009, unless regulatory reviews affect that date, and have a one-year term.

The Postal Service maintains that certain portions of each contract and certified statement required by 39 CFR 3015.5(c)(2), containing names and identifying information of the Global Plus 1 customers, related financial information, as well as the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 3.

The Postal Service asserts the contracts are functionally equivalent because they share similar cost and market characteristics and should be classified as a single product. *Id.* at 3. It states that while the precursor contracts filed in Docket Nos. CP2008-9 and CP2008-10 exhibited minor distinctions based on differences in customers' negotiations, business needs or relationship with the Postal Service, the new versions of the agreements differ primarily in the method used for structuring the discounts offered. *Id.* at 4. The Postal Service also states that the instant contracts' customers are the same Postal Qualified Wholesalers (PQWs) as the parties to the contracts in Docket Nos. CP2008-9 and CP2008-10. The essence of the service to the PQW customers is offering price-based incentives to commit large amounts of mail volume or postage revenue for International Priority Airmail (IPA),

Establishing Prices and Classifications for Global Plus Contracts, June 2, 2008, at 1.

International Surface Air Lift (ISAL), Express Mail International (EMI), and Priority Mail International (PMI).<sup>4</sup>

The Postal Service indicates that the instant contracts have material differences which include removing retroactivity provisions; clarifying aspects subject to regulatory oversight; expanding entry locations; restructuring price incentives, commitments, and penalties; and clarifying the parties' obligations in the event of termination. *Id.* at 4-7.

The Postal Service maintains these differences only add detail or amplify processes included in prior Global Plus 1 contracts. It contends because the contracts have the same cost attributes and methodology as well as similar cost and market characteristics, the differences do not affect the fundamental service being offered or the essential structure of the contracts. *Id.* at 7-8. It states the contracts are substantially similar both to one another and to the precursor Global Plus 1 contracts. Therefore, it asserts these contracts are "functionally equivalent in all pertinent respects." *Id.* at 8.

#### II. Notice of Filing

The Commission establishes Docket Nos. CP2009-46 and CP2009-47 for consideration of the matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the instant contracts are consistent with the policies of 39 U.S.C. 3632, 3622, or 3642. Comments are due no later than July 23, 2009.

The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in these dockets.

#### III. Ordering Paragraphs

##### *It is Ordered:*

1. The Commission establishes Docket Nos. CP2009-46 and CP2009-47 for consideration of the issues raised in these dockets.

2. Comments by interested persons on issues in these proceedings are due no later than July 23, 2009.

3. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the

<sup>4</sup> The Postal Service states the commitments also account for Global Bulk Economy and Global Direct items mailed under a separate but related Global Plus 2 contract with each customer. The Global Plus 2 contracts are the subject of a separate competitive products proceeding.

interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

Issued: July 16, 2009.

By the Commission.

**Judith M. Grady,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28819; File No. 812-13578]

### The Alger Funds, et al.; Notice of Application

July 16, 2009.

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

**ACTION:** Notice of an application for an order pursuant to (a) section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(j) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements.

#### SUMMARY OF THE APPLICATION:

Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

*Applicants:* The Alger Funds, The Alger American Fund, The Alger Institutional Funds, The Alger Funds II (formerly, The Spectra Funds), and Alger China-U.S. Growth Fund (formerly, The China-U.S. Growth Fund) (each, a "Trust" and collectively, the "Trusts"), and Fred Alger Management, Inc. ("FAM").

*Filing Dates:* The application was filed on September 25, 2008 and amended on March 12, 2009, June 24, 2009 and July 14, 2009.

*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 August 10, 2009, 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, 111 Fifth Avenue, New York, New York 10003.

**FOR FURTHER INFORMATION CONTACT:** Jill Ehrlich, Attorney Adviser, at (202) 551-6819 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 via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. Each Trust consists of one or more series ("Funds"). FAM, a New York corporation and an indirect wholly-owned subsidiary of Alger Associates, Inc., is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser and administrator of each Fund.<sup>1</sup>

2. Some Funds may make short-term loans to banks or other entities by purchasing bank time deposits. Other Funds may need to borrow money from the same or similar banks for temporary purposes to satisfy redemption requests, to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a security sold by a Fund has been delayed, or for other temporary purposes. Currently, certain Funds have access to uncommitted bank loans from their custodian bank for temporary borrowing purposes.

<sup>1</sup> Applicants request that the relief also apply to any other registered management investment company that currently, or in the future, is part of the same "group of investment companies" as the Trusts, as defined in section 12(d)(1)(G)(ii) of the Act (included in the term "Trusts"). All entities that currently intend to rely on the requested order have been named as applicants. Any other entity that relies on the requested order in the future will comply with the terms and conditions set forth in the application.

3. If Funds borrow from their custodian, they pay interest on the loan at a rate that is significantly higher than the rate that is earned by other (non-borrowing) Funds on investments in bank time deposits. Applicants assert that this differential represents the profit earned by the lender on loans and is not attributable to any material difference in the credit quality or risk of such transactions. In addition, while bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, the borrowing Funds would incur commitment fees and/or other charges involved in obtaining a bank loan.

4. The Trusts seek to enter into master interfund lending agreements ("Interfund Lending Agreements") with each other on behalf of the Funds that would permit each Fund to lend money directly to and borrow directly from other Funds through a credit facility for temporary purposes (an "Interfund Loan"). Applicants believe that the proposed credit facility would both substantially reduce the Funds' potential borrowing costs and enhance the ability of the lending Funds to earn higher rates of interest on their short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish and maintain committed lines of credit or other borrowing arrangements with unaffiliated banks. Alger Money Market Fund, a series of The Alger Funds, will not participate as a borrower in the proposed credit facility. Additionally, a number of Funds are barred by their fundamental policies from participating as lenders in the proposed credit facility.<sup>2</sup>

5. Applicants anticipate that the proposed credit facility would provide a borrowing Fund with significant savings at times when the cash position of the borrowing Fund is insufficient to meet temporary cash requirements. This situation could arise when shareholder redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). However, redemption

<sup>2</sup> Each of Alger LargeCap Growth Fund, Alger SmallCap Growth Institutional Fund, Alger MidCap Growth Institutional Fund, Alger LargeCap Growth Institutional Fund and Alger Capital Appreciation Institutional Fund is prohibited from "making loans to others, except through purchasing qualified debt obligations, lending portfolio securities or entering into repurchase agreements."