

managers. Applicants expect far more available uninvested cash each day than borrowing demand. After the Credit Facility Committee has allocated cash for Interfund Loans, the Credit Facility Committee would invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts to the Funds.

10. The Credit Facility Committee would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Committee believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of trustees who are not "interested persons" of the Fund, as defined in section 2(a)(19) of the Act ("Independent Trustees"), to ensure both borrowing and lending Funds participate on an equitable basis.

11. PBA and the Credit Facility Committee would (a) Monitor the interest rates charged and other terms and conditions of the Interfund Loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the interest rates charged.

12. PBA, through the Credit Facility Committee, would administer the credit facility under its existing management or advisory agreement with each Fund and would receive no additional fee for its services. PBA or companies affiliated with it may collect fees in connection with repurchase and lending transactions generally, including transactions through the credit facility, for pricing and record keeping, bookkeeping and accounting services. Fees would be no higher than those applicable for comparable loan transactions.

13. Each Fund's participation in the credit facility is consistent with its organizational documents and its investment policies and limitations. The prospectus or statement of additional information ("SAI") of each Fund

discloses the extent to which the respective Fund is able to mortgage or pledge securities to secure permitted borrowings. If the requested order is granted, the SAI for each Fund participating in the credit facility will disclose the existence of the interfund lending arrangements.

14. In connection with the credit facility, applicants request an order under (a) Section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) under section 17(d) and rule 17d-1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having PBA as their common investment advisor.

2. Section 6(c) provides that an exemptive order may be granted where an 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. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company

from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) PBA would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Funds otherwise would invest in short-term repurchase agreements or other short-term instruments; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than they could obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to them under their bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no