

with Section 6(b)(5), in that it is designed to promote just and equitable principals of trade, as well as to protect investors and the public interest, by providing a more efficient and competitive market for FCOs. Widening the Japanese yen quote spread parameters to reflect current volatility and wider spreads in competing markets should promote market depth and liquidity by allowing Phlx market makers to compete more effectively.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Instruct proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission grant accelerated approval of its proposal.

IV. Solicitations of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-Phlx-95-47 and should be submitted by October 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-23473 Filed 9-20-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21360; 812-9644]

Daily Money Fund, et al.; Notice of Application

September 14, 1995.

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

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Daily Money Fund, Daily Tax-Exempt Money Fund, Fidelity Advisory Annuity Fund, Fidelity Special Situations Fund, Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Beacon Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Destiny Portfolios, Fidelity Deutsche Mark Performance Portfolio, L.P., Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Government Securities Fund, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Institutional Cash Portfolios, Fidelity Institutional Tax-Exempt Cash Portfolios, Fidelity Institutional Investors Trust, Fidelity Institutional Trust, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal

Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Sterling Performance Portfolio, L.P., Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investments-Bond Fund, L.P., Fidelity U.S. Investments-Government Securities Fund, L.P., Fidelity Yen Performance Portfolio, L.P., Spartan U.S. Treasury Money Market Fund, Variable Insurance Products Fund, Variable Insurance Products Fund II, and Zero Coupon Bond Fund (each a "Trust"); on behalf of themselves and all subsequently registered open-end investment companies advised by Fidelity Management & Research Company ("FMR") (collectively, with the Trusts, the "Funds"); and FMR.

RELEVANT ACT SECTIONS: Order requested (a) under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a-7 thereunder; (b) under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1) of the Act; and (c) pursuant to section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit each applicant investment company to establish deferred compensation plans for its trustees who are not interested persons of the company.

FILING DATES: The application was filed on June 27, 1995, and amended on August 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 82 Devonshire Street F5E, Boston, Massachusetts 02109-3614.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at

³ 17 CFR 200.30-3(a)(12) (1994).

(202) 942-0573, or C. David Messman, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Trust is a registered open-end management investment company advised by FMR, Fidelity Distributors Corporation or National Financial Services Corporation (each a "Distributor") serve as the distributors of the Trusts' shares.

2. Each Fund has or will have a board of trustees, directors, or director general partners ("trustees"), a majority of whom are not "interested persons" of that Fund within the meaning of section 2(a)(19) of the Act. Each trustee, other than those who are "interested persons" of the Trusts, receives an annual fee. No trustee who is an affiliated person of FMR or a Distributor receives any remuneration from applicants.

3. The proposed deferred fee arrangements would be implemented by means of a Fee Deferral Plan (the "Plan") entered into by each Fund. The Plan would permit individual trustees of a Fund who are not "interested persons" of such Fund to elect to defer receipt of all or a portion of their fees. This would enable the trustees to defer payment of income taxes on such fees. The trustees may amend the Plan from time to time. Such amendments will be consistent with any relief granted pursuant to this application.

4. Under the Plan, the trustee's deferred fees will be credited to a book entry account established by each participating Fund (the "Deferred Fee Account"), as of the date such fees would have been paid to a trustee. The value of the Deferred Fee Account will be periodically adjusted by treating the Deferred Fee Account as though an equivalent dollar amount had been invested and reinvested in certain designated securities (the "Underlying Securities"). The Underlying Securities for a Deferred Fee Account will be shares of the Funds that a participating trustee designates. Each Deferred Fee Account shall be credited or charged with book adjustments representing all interest, dividends, and other earnings and all gains and losses that would have been realized had such account been invested in the Underlying Securities.

5. As a matter of risk management, each Fund intends, and with respect to any money market Fund that values its

assets by the amortized cost method undertakes, to purchase and maintain Underlying Securities in an amount equal to the deemed investments of the Deferred Fee Accounts. Although a Fund's own shares may serve as an Underlying Security with respect to deferred fees earned by a trustee, it is not anticipated that a Fund will purchase its own shares. Rather, monies equal to the amount credited to the Deferred Fee Account will be invested as part of the general investment operations of that Fund.

6. The amounts paid to the trustees under the Plan are expected to be insignificant in comparison to total net assets of applicants. The Plan provides that a Fund's obligation to make payments from a Deferred Fee Account will be a general obligation of the Fund and payments made pursuant to the Plan will be made from the Fund's general assets and property. With respect to the obligations created under the Plan, the relationship of a trustee to a Fund will be that of a general unsecured creditor. A Fund will be under no obligation to the trustee to purchase, hold, or dispose of any investments but, if a Fund chooses to purchase investments to cover its obligations under the Plan, then any and all such investments will continue to be part of the general assets and property of the Fund.

7. Under the Plan, a trustee may specify that the trustee's deferred fees be distributed in whole or in part commencing on or as soon as practicable after a date specified by the trustee, which may not be sooner than the earlier of (a) a date five years following the deferral election, or (b) the first business day of January following the year in which the trustee ceases to be a member of the board of trustees of the Fund. Notwithstanding any elections by a trustee, his or her deferrals under the Plan shall be distributed (x) in the event of the trustee's death, or (y) upon the dissolution, liquidation, or winding up of the Fund, whether voluntary or involuntary; or the voluntary sale, conveyance or transfer of all or substantially all of the Fund's assets (unless the obligations of the Fund shall have been assumed by another Fund); or the merger of the Fund into another trust or corporation or its consolidation with one or more other trusts or corporations (unless the obligations of the Fund are assumed by such surviving entity and the surviving entity is another Fund.) In addition, upon application by a trustee and a determination by the Administrator that the trustee has suffered a severe and

unanticipated financial hardship, the Administrator shall distribute to the trustee, in a single lump sum, an amount equal to the lesser of the amount needed by the trustee to meet the hardship, or the balance of the trustee's Deferred Fee Account. Payments will be made in a lump sum or in installments as elected by the trustee. In the event of the trustee's death, amounts payable under the Plan will be payable to the trustee's designated beneficiary. In all other events, the trustee's right to receive payments will be nontransferable.

8. The Plan will not obligate any Fund to retain the services of a trustee, nor will it obligate any Fund to pay any (or any particular level of) trustee's fees to any trustee. The proposed arrangements will not affect the voting rights of the shareholders of any of the Funds. If a Fund purchases Underlying Securities issued by another Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such other Fund.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting relief from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f) and 22(g) of the Act and rule 2a-7 thereunder to the extent necessary to permit the Funds to enter into deferred fee arrangements with their trustees; under sections 6(c) and 17(b) of the Act granting relief from section 17(a)(1) to the extent necessary to permit the Funds to sell securities issued by them to participating Funds, and pursuant to section 17(d) of the Act and rule 17d-1 thereunder to permit the Funds to engage in certain joint transactions incident to such deferred fee arrangements.

2. Section 6(c) provides that the SEC may exempt any person, security, or transaction 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.

3. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact these sections. The Plan would not: (a) Induce speculative investments or provide opportunities for

manipulative allocation of any Fund's expenses or profits; (b) affect control of any Fund; (c) confuse investors or convey a false impression as to the safety of their investments; or (d) be inconsistent with the theory of mutuality of risk. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

4. Section 22(f) prohibits undisclosed restrictions on the transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth any restrictions on transferability or negotiability, and such restrictions are primarily to benefit the participating trustees and would not adversely affect the interests of the trustees or of any shareholder of any Fund.

5. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants submit that the Plan would provide for deferral of payment of fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

6. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Any relief granted from section 13(a)(3) of the Act would extend only to existing Trusts with a fundamental investment restriction prohibiting investments in securities of investment companies, except in connection with a merger, consolidation, or acquisition of assets. Applicants submit that it is appropriate to exempt applicants as necessary from section 13(a)(3) so as to enable the existing Trusts to invest in Underlying Securities without a shareholder vote. Applicants will provide notice to shareholders in the statement of additional information of the deferred fee arrangements with the trustees. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Trust, and will at all times equal the value of the Trust's obligations to pay deferred fees.

7. Rule 2a-7 imposes certain restrictions on the investments of "money market funds," as defined under the rule, that would prohibit a

fund that is a money market fund from investing in the shares of any other Fund. Applicants submit that the requested exemption would permit the Funds to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements would not affect net asset value. Applicants further assert that the amounts involved in all cases would be *de minimis* in relation to the total net assets of each Fund, and would have no effect on the per share net assets value of the Funds.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company, except in limited circumstances. Funds that are advised by the same entity may be "affiliated persons" of one another under section 2(a)(3)(C) of the Act by reason of being under the common control of their adviser. Applicants assert that section 17(a)(1) was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interests in such enterprises. Applicants submit that an exemption from this provision would not implicate Congress' concerns in enacting section 17(a)(1), but would facilitate the matching of each Fund's liability for deferred trustees' fees with the Underlying Securities that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the transaction is consistent with the policy of each registered investment company concerned; and (c) the transaction is consistent with the general purposes of the Act. Because section 17(b) may apply only to a specific proposed transaction,¹ applicants also request an order under section 6(c) so that relief will apply to a class of transactions. Applicants believe that the proposed transactions satisfy the criteria of sections 6(c) and 17(b).

10. Section 17(d) and rule 17d-1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement on a basis different from or

less advantageous than that of the affiliated person. Under the Plan, participating trustees would not receive a benefit that otherwise would inure to a Fund or its shareholders. When all payments have been made to a participating trustee, the participating trustee will be no better off (apart from the effect of tax deferral) than if he or she had received fees on a current basis and invested them in Underlying Securities.

Applicants' Conditions

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

1. With respect to the requested relief from rule 2a-7, any money market Fund that values its assets by the amortized cost method or the penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such Fund's liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-23377 Filed 9-20-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21361; 812-9630]

Janus Investment Fund, et al.; Notice of Application

September 14, 1995.

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

ACTION: Notice of application for exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Janus Investment Fund, Janus Aspen Series, Janus Service Corporation ("JSC"), and Janus Capital Corporation ("Janus Capital").

RELEVANT ACT SECTION: Order requested under section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the series of certain investment companies and certain private accounts to deposit their uninvested cash balances in one or more joint accounts to be used to enter into short-term investments.

¹ In the Matter of Keystone Custodian Funds, Inc., 21 SEC 295 (1945).