other disposition of a co-investment transaction.

4. For these reasons, applicants believe that the requested exemption for such co-investment transactions meets the standards for granting exemptive relief under sections 17(d) and 57(a)(4) and rule 17d–1.

Applicant's Conditions

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

1. (a) To the extent that a Fund is considering new investments, the Managing Shareholder will review investment opportunities on its behalf, including investments being considered on behalf of the other Fund. The Managing Shareholder will determine whether a particular investment is eligible for investment by either Fund.

(b) If the Managing Shareholder deems an investment eligible for investment by either Fund, the Managing Shareholder will determine what it considers to be an appropriate amount that the Fund should invest in the particular investment. Where the aggregate amount recommended for the Funds is greater than the amount available for investment, the amount available for purchase by a Fund shall be determined on a *pro rata* basis by dividing the net assets of the Fund by the sum of the net assets of both Funds.

(c) Following the making of the determinations referred to in (a) and (b), the Managing Shareholder will distribute written information concerning the proposed co-investment transaction to the Independent Trustees of each Fund.

(d) The Independent Trustees of each Fund will review the information regarding the Managing Shareholder's preliminary determination. A Fund will only engage in a co-investment transaction if a Required Majority of the trustees of the Fund conclude, prior to the acquisition of the investment, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of the Fund and do not involve overreaching of the Fund or such shareholders on the part of any person concerned;

(ii) The transaction is consistent with the interests of the share holders of the Fund and is consistent with the Fund's investment objectives and policies as recited in its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to shareholders; and

(iii) The investment by the other Fund would not disadvantage the Fund and that participation by the Fund would not be on a basis different from or less advantageous than that of the other Fund.

(e) Each Fund has the right to decline to participate in a particular co-investment transaction or may purchase less than its full allocation.

2. Neither Fund will make an investment for its portfolio if a Fund or the Managing Shareholder or a person controlling, controlled by, or under common control with the Managing Shareholder is an existing investor in such issuer.

3. All co-investment transactions will consist of the same class of securities, including the same registration rights (if any) and other rights related thereto, at the same unit consideration, and on the same terms and conditions, and the settlement dates will be the same.

4. If a Fund elects to sell, exchange, or otherwise dispose of an interest in a particular security that is also held by the other Fund, the Managing Shareholder will notify the other Fund of the proposed disposition at the earliest practical time and such Fund will be given the opportunity to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions. The Managing Shareholder will formulate a recommendation as to participation by such Fund in such a disposition, and provide a written recommendation to the Independent Trustees of such Fund. A Fund will participate in any such disposition if a Required Majority of its trustees determines that it is in the best interest of the investing Fund. Each Fund will bear its own expenses associated with any such disposition of a portfolio security.

5. If a Fund desires to make a ''follow-on'' investment (i.e., an additional investment in the same entity) in a particular issuer whose securities are held by the other Fund or to exercise rights to purchase securities of such an issuer, the Managing Shareholder will notify the other Fund of the proposed transaction at the earliest practical time. The Managing Shareholder will formulate a recommendation as to the proposed participation by each Fund in a follow-on investment, and provide the recommendation to the Fund's Independent Trustees along with notice of the total amount of the follow-on investment. Each Fund's Independent Trustees will make their own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment available to a Fund is not based on the amount of its initial investment, the relative amount of investment by each Fund will be based on a ratio derived by comparing the remaining funds available for investment by each Fund with the total amount of the follow-on investment. A Fund will participate in such investment to the extent that a Required Majority of its trustees determine that it is in the Fund's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The Independent Trustees of the Funds will be provided quarterly for review all information concerning transactions made by the Funds so that they may determine whether all co-investment transactions made during the preceding quarter, including co-investment opportunities that were declined, complied with these conditions.

7. Each Fund will maintain the records required by section 57(f)(3) of the Act as if each of the co-investment transactions permitted under these conditions were approved by the Fund's Independent Trustees under section 57(f).

8. The Funds will not have common Independent Trustees.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27884 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–21471; 812–9690]

SEI Financial Management Corporation, et al.; Notice of Application

November 3, 1995.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: SEI Financial Management Corporation and SEI Financial Services Company (collectively, ''SEI'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act exempting SEI from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder permitting certain transactions.

SUMMARY OF APPLICATION: SEI seeks an order amending a prior order that facilitates the conversion of bank-sponsored collective funds into mutual funds by permitting registered open-end management investment companies administered or distributed by SEI, and

any registered open-end management investment company as may in the future be distributed or administered by SEI or any entity controlling, controlled by, or under common control with SEI (together with any portfolio thereof, the ''Funds'') to accept in-kind transfers of marketable securities from bank-sponsored collective investment funds in exchange for shares of Funds advised by the bank. As amended, the order also would permit the Funds to accept in-kind transfers of marketable securities from bank-sponsored accounts consisting solely of the assets of a single retirement plan for employees of the bank or bank affiliates, in exchange for Fund shares.

FILING DATES: The application was filed on July 25, 1995, and amended on November 2, 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 SEI with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1995, and should be accompanied by proof of service on SEI, 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 reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. SEI, c/o SEI Financial Services Company, 680 East Swedesford Road, Wayne, Pennsylvania 19087, Attention: Kathryn L. Stanton, Esq.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 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. SEI, on behalf of the Funds, seeks an order amending a prior order of exemption (the ''Prior Order'').[1] The Prior Order was issued under sections 6(c) and 17(b) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder, granting an exemption from the provisions of section 17(a) of the Act and allowing the Funds to participate in the conversion of assets from bank-sponsored collective investment funds (''CIFs'') into shares of the Funds.

2. Some or all of the assets in a converting CIF may belong to employee retirement plans established for employees of the bank that sponsors the converting CIF (the ''Bank'') or employees of entities that are affiliated persons of the Bank (the ''Affiliated Plans''). From time to time, however, a Bank also may maintain assets of an Affiliated Plan in an account consisting solely of the assets of that Plan (an ''Affiliated Plan Account''), rather than in a CIF. Because the Prior Order does not contemplate expressly Affiliated Plan Account conversions, SEI seeks to amend the Prior Order to allow the conversion of Affiliated Plan Account assets, as well as CIF assets, into shares of a Fund. Any order granted on the current application will supersede the Prior Order.

3. SEI provides or procures administrative and other services necessary for the operation of the Funds and their portfolios. The precise services provided by SEI to a Fund may vary depending on the contract with the particular Fund. SEI will, however, always provide certain core services specified in the application (including the provision of individuals reasonably acceptable to the Fund's board of directors for nomination, appointment, or election as officer of the Fund) that will enable SEI to help assure and monitor compliance with the terms of any order that may be granted on the application. By virtue of its role as administrator, SEI plays an integral and active role in the conversion of CIFs, and will play such a role in the conversion of Affiliated Plan Accounts, into Funds.

4. The Funds are or will be registered as open-end management investment companies under the Act. Such Funds' shares are or will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933 (the ''Securities Act''). The overall management of each Fund, including the negotiation of investment advisory and other service contracts, rests with the members of the Board of Directors or Trustees (the ''Board of Directors'') of the Fund, at least 40% of whom are not ''interested persons'' (as defined by the Act) of the Fund.

5. The CIFs and Affiliated Plan Accounts are sponsored by Banks as investment vehicles for employee retirement plans. The CIFs and Affiliated Plan Accounts are excluded from the definition of investment company under section 3(c)(11) of the Act, which excepts certain individual and collective investment vehicles that consist solely of the assets of employee retirement plans qualified under Section 401 of the Internal Revenue Code or similar governmental plans described in section 3(a)(2)(C) of the Securities Act (each, a ''Plan''). In addition to sponsoring a CIF and/or maintaining an Affiliated Plan Account, a Bank or an affiliate of the Bank also may serve as the investment adviser to a Fund, within the meaning of section 2(a)(20) of the Act. In some instances, the Bank may provide additional services such as custody and transfer agency to a Fund and be compensated by the Fund for those services.

6. Banks frequently determine that Plan holders would be better served if sponsored CIFs and/or Affiliated Plan Accounts were converted into Funds with substantially similar investment objectives so that the Plan holders may be afforded the enhanced disclosure and other protections of the Securities Act and the Act. Banks that seek conversion of CIF and/or Affiliated Plan Accounts assets will cause the CIFs and Affiliated Plan Accounts to transfer their assets to corresponding portfolios of Funds with substantially similar investment objectives in exchange for Fund shares (the ''Proposed Transfers'').

7. Each Affiliated Plan participating in a Proposed Transfer will have an employee benefit review committee or equivalent body that serves as a fiduciary for the Plan (the ''Committee''). Each unaffiliated Plan participating in a Proposed Transfer will have an independent or ''second'' fiduciary, in addition to and independent of the Bank or its affiliates, that supervises the investment of that Plan's assets. This second fiduciary generally will be the unaffiliated Plan's named fiduciary, trustee, or sponsoring employer and will be subject to fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 (''ERISA''). Under section 404(a) of ERISA, such fiduciaries must ensure that the investment of the Plans' assets is prudent and operates exclusively for the benefit of participating employees of the particular corporation and its subsidiaries and of the participating employees' beneficiaries.

8. Before transferring a CIF's or Affiliated Plan Account's assets to a Fund, a Bank will be required to obtain the approval of the Committee, the

[1] Investment Company Act Release Nos. 21128 (June 9, 1995) (notice) and 21194 (July 7, 1995) (order).

Plan's second fiduciary, or both, as the case may be. The Bank will provide the Committee and the second fiduciaries with a current prospectus for the relevant portfolio(s) of the Fund and a written statement giving full disclosure of the fee structure and the terms of the Proposed Transfer. Such disclosure will explain why the Bank believes that the investment of Plan assets in the Fund is appropriate.

9. On the basis of such information, the Committee, the second fiduciary, or both, as the case may be, will decide whether to authorize the Bank to invest the relevant Plan's assets in the Fund and to receive fees from the Fund (subject to the Bank's agreement to waive, credit, or rebate relevant fees). A Bank will not collect fees at both the Plan level and the Fund level for managing the same assets. Depending on the Plan, the Bank either will charge a fee only to the Fund or will rebate or credit its management fees at the Plan level.

10. Subject to obtaining the fiduciary approvals discussed above and the requested exemptive order, SEI will assist a Bank, in SEI's capacity as administrator, to effect the acquisition of Fund shares by a Plan currently invested in a CIF or Affiliated Plan Account. On the date of each transfer, the converting CIF or Affiliated Plan Account will deliver to the corresponding Fund securities equal in value to the interest of each participating Plan, in exchange for Fund shares, using market values as of the time that the Fund calculates its net asset value at the close of business on that day. The Fund share received by a CIF then will be distributed, *pro rata*, to all Plans whose interests were converted as of that date. No such additional distribution will be required in the case of an Affiliated Plan Account, as it will hold Fund shares already. All securities transferred to a Fund will be securities for which market quotations are readily available, as that term is used in rule 17a–7(a) under the Act, and will be consistent with the investment objectives and fundamental policies of the corresponding Fund.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in pertinent part, defines an ''affiliated person'' to include: (a) any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by or under common control with such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Section 17(d) of the Act prohibits any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1 under the Act provides that no joint transaction covered by the rule may be consummated unless the SEC issues an order upon application.

3. Because a Bank that sponsors a CIF and/or Affiliated Plan Account Plan Account may have legal title to the assets of the CIF or Affiliated Plan Account and therefore may be viewed as acting as a principal in the Proposed Transfers, and because a CIF or Affiliated Plan Account and a Fund may be viewed as being under the common control of that Bank within the meaning of section 2(a)(3)(C), the Proposed Transfers may be prohibited by section 17(a). For the same reasons, the Proposed Transfers might be deemed to be a prohibited enterprise or other joint arrangement within the meaning of rule 17d–1.

4. Rather than requiring an exemption for all CIF conversions, the SEC's Division of Investment Management has issued a series of no-action letters permitting conversions if the changes comply with subparagraphs (b)–(f) of rule 17a–7 under the Act.[2] *See e.g.*, Federated Investors (pub. avail. Apr. 21, 1994). The letters require, however, that no first or second-tier affiliated person of the registered open-end fund have a beneficial interest in the exchange (except for the bank acting in its fiduciary capacity). Because some or all of the assets in a converting CIF may belong to Affiliated Plans, and the converting Affiliated Plan Accounts will consist entirely of such assets, SEI is unable to rely on the no-action letters.

5. Section 17(b) of the Act provides that any person may file an application for an order exempting a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and the general policies and purposes of the Act.

6. Under section 6(c) of the Act, the SEC may exempt any person or transaction from any provision of the Act, or any rule thereunder, 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.

7. In passing upon applications under rule 17d–1, the SEC considers whether participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act, and is not on a basis less advantageous than that of other participants.

8. SEI requests an order under sections 6(c) and 17(b) granting an exemption from section 17(a), and pursuant to section 17(d) and rule 17f–1, to amend the Prior Order to allow the Proposed Transfers of Affiliated Plan Account as well as CIF assets. SEI submits that the terms of the Proposed Transfers, as set forth above, satisfy the standards for an exemption set forth in sections 6(c) and 17(b) and rule 17d–1.

9. The terms of the Proposed Transfers will be reasonable and fair to the Plans and to the shareholders of the Funds. The fact that the Proposed Transfers are designed as in-kind transfers does not affect their fairness. If the Proposed Transfers instead were effected in cash, the Plans would have to sell their securities, thereby incurring brokerage commissions or the adverse effects of mark-downs. Similarly, following the Plans' investment in the Fund, the Fund would purchase similar securities in the market, causing a second round of brokerage commissions and the adverse effects of mark-ups. In addition, since some time could elapse between the two transactions, the Fund would not necessarily be able to purchase the same quantity of securities at the same price. In contrast, the Proposed Transfers would not expose the Plans' assets to transaction costs or timing risk. Moreover, the Proposed

[2] Rule 17a–7 conditionally exempts from the prohibitions of section 17(a) certain purchases and sales of securities between registered investment companies and certain affiliated persons, where the affiliation arises solely by reason of having a common investment adviser, directors and/or officers. Since the Banks may be deemed to have a direct or indirect beneficial interest in the performance of the CIFs and/or Affiliated Plan Accounts and the Funds, the limited affiliation required to make rule 17a–7 available does not exist.

Transfers will result in no gain or loss being recognized by the individual participants of the Plans.

10. The terms of the Proposed Transfers also will not involve overreaching. Although each Bank may have an indirect beneficial interest in the performance of the Funds, the Proposed Transfers will be subject to ERISA, must be approved by a Committee or second fiduciary and, as required by Condition 1 below, will be conducted in accordance with the valuation standards set forth in rule 17a–7. In addition, as required by Condition 2 below, the conversions will be made subject to the requirement of rule 17a–8 under the Act that the Fund Directors and Plan fiduciaries find that the Proposed Transfers are in the best interests of the Fund and the Plans.[3] SEI's administrative role and its significant compliance responsibilities places it in an ideal position to monitor each conversion and implement procedures designed to ensure that the terms and conditions of any application are strictly adhered to. Thus, the Proposed Transfers may be expected to occur in a manner that is in the best interests of both the Plans and the Funds.

11. The investment objectives and policies of the Funds and the CIFs and/or Affiliated Plan Accounts will be substantially similar. Therefore, it will be consistent with the policies of the Funds to acquire securities that the Bank has previously purchased for the CIFs and/or Affiliated Plan Accounts on the basis of substantially similar objectives and policies.

12. The request exemptive relief also would be consistent with the purposes intended by the policy and provisions of the Act, since the Proposed Transfers do not give rise to the abuses that sections 17 (a) and (d) and rule 17d–1 were designed to prevent. A primary purpose underlying sections 17 (a) and (d) and rule 17d–1 is to prevent a person with a pecuniary interest in a transaction from using his or her position with a registered investment company to benefit himself or herself to the detriment of the company's shareholders. After the Proposed Transfers, each Plan will be a shareholder in a Fund with substantially similar investment objectives. In this sense, the Proposed Transfers can be viewed as a change in the form in which assets are held, rather than as a disposition giving rise to section 17 concerns. In addition, the participation in the Proposed Transfers by each Fund will not be on a basis less advantageous than that of other participants for purposes of rule 17d–1.

13. The effectuation of the Proposed Transfers in the manner described also is fully consistent with the policies underlying the adoption of rules 17a–7 and 17a–8 under the Act. Even though Fund shares would be exchanged for securities, rather than ''solely'' for cash as required by subparagraph (a) of rule 17a–7, the terms of rule 17a–7 otherwise will be fully met, as required by Condition 1 below. In addition, as set forth in Conditions 2 and 3, below, the Plan fiduciaries and Directors of the Fund will be required to make the fairness and dilution findings required by rule 17a–8.

Applicants' Conditions

SEI agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The Proposed Transfers will comply with the terms of rule 17a–7(b)–(f).

2. The Proposed Transfers will not occur unless and until: (a) the Board of Directors of the Fund (including a majority of its directors who are not interested persons of the Fund) and the Committee or the Plans' second fiduciaries, as the case may be, find that the Proposed Transfers are in the best interests of the Fund and the Plans, respectively; and (b) the Board of Directors of the Fund (including a majority of its directors who are not interested persons of the Fund) finds that the interests of the existing shareholders of the Fund will not be diluted as a result of the Proposed Transfers. These determinations and the basis upon which they are made will be recorded fully in the records of the Fund and the Plans, respectively.

3. In order to comply with the policies underlying rule 17a–8, any conversion will be approved by a Fund's Board of Directors, and any non-affiliated Plan's second fiduciaries who would be required to find that the interests of beneficial owners would not be diluted.

[3] Rule 17a–8 conditionally exempts from the prohibitions of section 17(a) the merger or consolidation of affiliated registered investment companies where the affiliation arises solely by reason of having a common investment adviser, common directors and/or common officers. Because the CIFs and Affiliated Plan Accounts are not registered investment companies, and the affiliation of the CIFs and/or Affiliated Plan Accounts and the Funds would not exist ''solely by reason of'' the commonality of their management, SEI cannot rely on rule 17a–8 for the Proposed Transfers.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27886 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21473; 812–9670]

Smith Barney Adjustable Rate Government Income Fund, et al.; Notice of Application

November 3, 1995.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Smith Barney Adjustable Rate Government Income Fund, Smith Barney Aggressive Growth Fund Inc., Smith Barney Appreciation Fund Inc., Smith Barney Arizona Municipals Fund Inc., Smith Barney California Municipals Fund Inc., Smith Barney Equity Funds, Smith Barney Florida Municipals Fund Inc., Smith Barney Fundamental Value Fund Inc., Smith Barney Funds, Inc., Smith Barney Income Funds, Smith Barney Investment Trust (formerly, Smith Barney Income Trust), Smith Barney Investment Funds Inc., Smith Barney Institutional Cash Management Fund Inc., Smith Barney Managed Governments Fund Inc., Smith Barney Managed Municipals Fund Inc., Smith Barney Massachusetts Municipals Fund, Smith Barney Money Funds, Inc., Smith Barney Municipal Money Market Fund, Inc., Smith Barney Muni Funds Inc., Smith Barney New Jersey Municipals Fund Inc., Smith Barney New York Municipals Fund Inc., Smith Barney Oregon Municipals Fund, Smith Barney Precious Metals and Minerals Fund Inc., Smith Barney Principal Return Fund, Smith Barney Series Fund, Smith Barney Telecommunications Trust, Smith Barney/Travelers Series Fund, Inc., Smith Barney Variable Account Funds, Smith Barney World Funds, Inc. The Consulting Group Capital Markets Funds, Greenwich Street California Municipal Fund Inc., Greenwich Street Municipals Fund Inc., High Income Opportunity Fund Inc., Managed High Income Fund Inc., Managed Municipals Portfolio Inc., Managed Municipals Portfolio II Inc., Municipal High Income Fund Inc., Smith Barney Intermediate Municipal Fund, Inc., Smith Barney Municipal Fund, Inc., The Italy Fund Inc., The Inefficient Market Fund, Inc. and Zenix Income Fund Inc.