

those provided in this condition. In no event will the Portfolios purchase any such securities from the Bond Division or from the syndicate manager of an underwriting syndicate of which the Bond Division is a member in "group sales" in an underwriting where the Related Purchasers in the aggregate purchase a majority or more of any class of an issue of such securities.

2. Purchases of Tennessee tax-exempt securities directly from the Bond Division or from a syndicate manager of an underwriting syndicate of which the Bond Division is a member when the purchases are designated as "group sales" be effected only in Tennessee tax-exempt securities which at the time of purchase have one of the following investment grade ratings from at least one nationally recognized rating agency: (a) one of the two highest investment grade ratings in the case of securities with remaining maturities of one year or less; and (b) one of the top three investment grade ratings in the case of securities with remaining maturities greater than one year.

3. Purchases of Tennessee tax-exempt securities directly from the Bond Division or from a syndicate manager of an underwriting syndicate of which the Bond Division is a member when the purchases are designated as "group sales" will be limited so that no such transaction will be effected if, as a result, the aggregate value of securities held by a Portfolio acquired pursuant to such transactions would exceed 50% of the total net assets of the Portfolio.

4. Purchases of Tennessee tax-exempt securities directly from the Bond Division or from a syndicate manager of an underwriting syndicate of which the Bond Division is a member when the purchases are designated as "group sales" will be effected only when the Tennessee tax-exempt securities acquired are otherwise unavailable for purchase. If the Bond Division is the sole underwriter of the securities, this condition is automatically fulfilled because there is no other potential seller. When the Bond Division is a member of an underwriting syndicate, the Investment Adviser will observe the following procedures to determine when the securities are unavailable from other members of the syndicate. Initially, the Investment Adviser will determine the aggregate number of securities which the Portfolios wish to acquire. Next, the Investment Adviser will attempt to purchase as much of this number as possible from members of the syndicate other than the Bond Division. After acquiring as many securities as possible from such other members, the Investment Adviser will attempt to

purchase from the Bond Division the number of securities which the Portfolios wish to acquire and have been unable to obtain from such other members. The securities acquired from such other members will be allocated first to the Portfolios to the extent of the number of securities it is entitled to acquire, based upon the relative needs of the Related Purchasers and the total number of securities purchased from such other members and from the Bond Division, whichever is less.

5. When the Portfolios purchase Tennessee tax-exempt securities from a syndicate manager of an underwriting syndicate of which the Bond Division is a member, the Portfolios will not: (a) Submit designated orders to a syndicate manager which are allocated to the Bond Division; (b) submit group orders to a syndicate manager which designate the Bond Division to receive any portion of the commission; or (c) otherwise allocate orders to the Bond Division.

6. The exemption will be valid only so long as the Investment Adviser and the Bond Division operate as separate and independent profit centers within the framework of First Tennessee Bank National Association (or become separate subsidiaries or affiliates thereof). The Investment Adviser will maintain offices physically separate from those of the Bond Division. Personnel assigned to the Investment Adviser will be devoted exclusively to the business and affairs of the Investment Adviser and will not receive compensation based on the volume or nature of transactions effected for the Portfolios with the Bond Division or an underwriting syndicate of which the Bond Division is a member, except to the extent that such transactions may affect the profits and losses of the Bank. The Bond Division will not share with the Investment Adviser any of its profits or losses on transactions effected by the Portfolios with the Bond Division or an underwriting syndicate of which the Bond Division is a member, provided that general compensation to the officers and employees of the Bank, including the Investment Adviser and the Bond Division, will not be affected by this undertaking. Personnel assigned to the Bond Division will not participate in or otherwise seek to influence the Investment Adviser other than in the normal course of sales activities of the same nature that are being carried out simultaneously with respect to unaffiliated institutional clients of the Bond Division. Senior executives of the Bank and/or First Tennessee National Corporation with responsibility for overseeing the operations of various divisions and subsidiaries are not

precluded from exercising those functions over the Investment Adviser because they oversee the Bond Division as well, provided that such persons shall not have any involvement with respect to transactions effected pursuant to the exemption and will not attempt to influence or control the purchase of securities by the Portfolios from the Bond Division or an underwriting syndicate of which the Bond Division is a member.

7. The Bond Division and the Investment Adviser will adopt a set of guidelines for their respective personnel to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the application and that the parties generally maintain arm's length relationships. Compliance officer(s) in conjunction with the Bank's audit division periodically will monitor the activities of the Bond Division and the Investment Adviser to make certain that they adhere to such guidelines and the conditions set forth in the application.

8. The trustees, including a majority of the independent trustees of the Trust who are not "interested persons" of the Trust and have no direct or indirect financial interest in the transaction, will review no less frequently than quarterly each purchase of Tennessee tax-exempt securities directly from the Bond Division or from a syndicate manager of an underwriting syndicate of which the Bond Division is a member when the purchases are designated as "group sales" since the last review and will determine that the terms of such transactions were reasonable and fair to the shareholders of the Portfolios and did not involve overreaching of the Portfolios or their shareholders on the part of any person concerned. In considering whether the price paid for the security was reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 96-15909 Filed 6-20-96; 8:45 am]

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[Rel. No. IC-22021; 813-146]

George K. Baum Employee Equity Fund, L.P.; Notice of Application

June 17, 1996.

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

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

APPLICANT: George K. Baum Employee Equity Fund, L.P. (the "Partnership").

RELEVANT ACT SECTIONS: Order requested under sections 6(b) and 6(e) granting an exemption from all provisions of the Act and the rules and regulations thereunder except section 9, certain provisions of sections 17 and 30, and sections 36 through 53.

SUMMARY OF APPLICATION: The Partnership requests an order that would grant an exemption from most provisions of the Act and would permit certain affiliated and joint transactions. The Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

FILING DATES: The application was filed on December 4, 1995, and amended on June 17, 1996.

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 July 12, 1996, 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. Applicant, 120 West 12th Street, Kansas City, MO 64105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942-0572, or Robert A. Robertson, 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.

Applicant's Representations

1. The Partnership was formed for the benefit of certain officers who are experienced professionals in the investment banking, merchant banking or securities business, or in administrative, financial, accounting, or operations activities related thereto

("Eligible Officers") of George K. Baum Holdings Inc. ("GKB Holdings"), a Delaware corporation, and its affiliates (as defined in rule 12b-2 promulgated under the Securities Exchange Act of 1934 (the "Exchange Act")) (GKB Holdings and its affiliates are referred to herein as the "Baum Entities"). The Partnership is intended to be a means of rewarding and retaining key professionals of the Baum Entities by enabling them to pool their investment resources to invest in opportunities which come to the attention of the Partnership. The pooling of resources permits diversification and participation in investments that usually would not be offered to individual investors. The preeminent purpose of the Partnership is to reward and retain key officers of the Baum Entities and to attract other qualified professionals to the Baum Entities.

2. George K. Baum & Company ("Baum"), a Missouri corporation and a wholly-owned subsidiary of GKB Holdings, is a full-line investment banking firm with headquarters in Kansas City, Missouri. Baum is the broker-dealer affiliate of the Baum Entities and is registered as a broker-dealer under the Exchange Act and is a registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

3. The Partnership will operate as a closed-end management investment company. The sole investment option of the Partnership will be to co-invest with George K. Baum Capital Partners, L.P. (the "Investor Fund"), a limited partnership to be formed under the laws of Delaware. The Investor Fund will seek to achieve long-term capital growth through investments in leveraged buyout and recapitalization transactions primarily involving manufacturing companies with revenues of between \$25 and \$100 million. Oversight required by the Investor Fund partnership agreement in connection with the Investor Fund's investments, potential conflicts of interest, and other matters will be provided by an advisory board consisting of at least three independent representatives of limited partners of the Investor Fund ("Investor Fund Advisory Board"). The Investor Fund will be exempt from registration under the Act by reason of the exemption afforded by section 3(c)(1) of the Act. The Investor Fund and the Partnership will be separate legal entities and will be administered separately. No person will be permitted to invest as a limited partner in both the Investor Fund and the Partnership.

4. The general partner of the Partnership is GKB Equity, Inc., a

Missouri corporation (the "General Partner"), and a wholly-owned subsidiary of GKB Holdings. George K. Baum Merchant Banc, L.L.C., a Missouri limited liability company and an affiliate of GKB Holdings, will be the investment adviser (the "Adviser") to both the Investor Fund and the Partnership. The Adviser has filed an application to become registered as an investment adviser under the Advisers Act.

5. Interests in the Partnership will be offered without registration under a claim of exemption pursuant to section 4(2) of the Securities Act of 1933 (the "Securities Act").¹ Interests will be offered and sold only to Eligible Officers of the Baum Entities or trusts established by such Eligible Officers for their benefit or the benefit of their immediate families.

6. To be an Eligible Officer an individual must be (at the time of his or her subscription for and admission to the Partnership) an officer at the level of vice president or above of one or more of the Baum Entities and must satisfy the requirements to be either an "Accredited Officer" or a "Non-Accredited Officer." To be an Accredited Officer, an individual must be (at the time of his or subscription for and admission to the Partnership) an "accredited investor" meeting the standards set forth in rule 501(a)(6) of Regulation D under the Securities Act. To be a Non-Accredited Officer, an individual must have had an individual income in excess of \$100,000 in each of the two most recent years, or joint income with that person's spouse in excess of \$150,000 in each of those years, and in both cases must have a reasonable expectation of reaching the same income level in the current year. In addition, Non-Accredited Officers will be limited to officers who meet one of the following criteria: (a) he or she is in charge of a principal business function of one of the Baum Entities and directly reports to either the CEO of Baum or the executive directors of the Adviser, or (b) he or she is an experienced vice president in Baum's corporate finance group who regularly works with clients in mergers and acquisitions and financings in the public and private equity markets and who has direct access to the managers of the Adviser on a regular basis.

7. The Eligible Officers are experienced professionals in the investment banking, merchant banking or securities business, or in the

¹ Section 4(2) exempts certain transactions by an issuer not involving any public offering from the Securities Act's registration requirement.

administrative, financial accounting, or operational activities related thereto. Each Non-Accredited Officer will have such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of an investment in the Partnership, or the Partnership reasonably believes immediately prior to making any sale that such person comes within this description. The limitations on the class of persons who may acquire interests ("Limited Partners"), in conjunction with the other characteristics of the Partnership, will result in the Partnership meeting the definition of an "employees' securities company" under section 2(a)(13) of the Act. No Eligible Officer will be required to invest in the Partnership.

8. Each Limited Partner will make a commitment to invest in the Partnership (a "Commitment"). An Accredited Officer's Commitment will expire on the sixth anniversary of the initial closing of the Investor Fund (the "Commitment Period"). During the 30 day period at the beginning of each fiscal year (the "Adjustment Period"), Accredited Officers may increase, but not decrease, the amount of their Commitment. Non-Accredited Officers may only make Commitments for up to 10% of his or her W-2 income derived from the Baum Entities in the prior fiscal year. On each anniversary date, Non-Accredited Officers may increase (subject to the 10% income maximum) or decrease the amount of their Commitment. If a Non-Accredited Officer qualifies as an Accredited Officer at any time during the Commitment Period, he or she must make a Commitment during the next Adjustment Period for the balance of the Commitment Period in accordance with the terms applicable to Accredited Officers or may choose not to make any further investment in the Partnership.

9. The General Partner will determine in its sole discretion the amount and timing of capital contributions to be made by the Limited and General Partners to the Partnership. Capital contributions will fund Partnership investments and the payment of Partnership expenses. The maximum amount of capital contributions that a Limited Partner may be required to make during the life of the Partnership will be limited to the Limited Partner's Commitment. The minimum Commitment of each Accredited Officer will be \$10,000, subject to waiver by the General Partner in its sole discretion. There will be no assurance of the precise timing or amount of capital calls but the General Partner expects that investments by the Partnership will be

made over a four to six-year period and the Partners' Commitments will be called over this period.

10. The management and control of the Partnership, including all investment decisions, will be vested in the General Partner. The management and control of the General Partner will, in turn, be vested in the board of directors of the General Partner, all of whom are Eligible Officers. The General Partner will enter into a management agreement (the "Management Agreement") with the Adviser. The Adviser will make all investment decisions on behalf of the Investor Fund and the Partnership, as well as provide personnel, office space and business facilities to the Investor Fund and the Partnership.

11. Until the end of the Commitment Period, the Partnership will pay the Adviser a management fee, payable quarterly in advance, equal to 3% per year of the aggregate amount of the Commitments, and thereafter the management fee will be equal to 3% per year of the aggregate amount of the cost basis of securities owned by the Partnership. The management fee will comply with all provisions of the Investment Adviser's Act of 1940. To the extent not otherwise reimbursed, the Adviser will have the right to be reimbursed by the Investor Fund and the Partnership for its out-of-pocket expenses incurred in connection with the transactions proposed on behalf of the Investor Fund and the Partnership. These expenses will be shared between the Investor Fund and the Partnership *pro rata* according to the aggregated capital commitments of each.

12. Prior to selling interests to Eligible Officers, the Partnership will distribute to Eligible Officers a copy of offering memorandum for the Investor Fund, memorandum containing a summary description of the terms of the Partnership, and a copy of the Partnership Agreement. In addition, each Eligible Officer will be provided a copy of the application for the requested exemptive relief and will be given the opportunity to ask questions of the Partnership and the Adviser.

13. Except for short-term cash investments, the Partnership will co-invest its capital in investments in which the Investor Fund invests. The amount of the Partnership co-investment will bear the same proportion to the aggregate investments of the Investor Fund and the Partnership as the aggregate capital commitments of the Partnership bear to the aggregate capital commitments of the Investor Fund and the Partnership. (Any entity in which the Partnership and the

Investor Fund invests is a "Portfolio Company".) It is expected that the economic terms applicable to the Partnership's investments will be identical to the corresponding investments by the Investor Fund; however, investments of the Investor Fund may have more favorable non-economic terms (e.g., the right to representation on the board of directors of a Portfolio Company) if required for the Investor Fund to qualify as a venture capital operating company under the Employees' Retirement Income Securities Act or for other regulatory reasons.

14. The Partnership and the Investor Funds will not be permitted, except with the consent of the Investor Fund Advisory Board, to make an investment in any company in which a member of the Baum Entities previously has made an investment, or in which a member is a director or officer. The Partnership and the Investor Fund also will not be permitted, except with the consent of the Investor Fund Advisory Board, to make a follow-on investment in a Portfolio Company previously participated in by a member of the Baum Entities if, in such round, the member of the Baum Entities is acquiring more or less than its *pro rata* position from the previous round.

15. Subject to the limitations described above, the Partnership will be permitted to enter into transactions involving (a) a member of the Baum Entities (including without limitation the Investor Fund), (b) a Portfolio Company, (c) any partner of the Investor Fund that is not a member of the Baum Entities (together with the affiliates of such partner, a "Non-Baum Investor Fund Partner"), or (d) the General Partner or any Limited Partner (collectively the "Partners") or person or entity related to any Partner. Any such transaction, however, must be on terms no less favorable to the Partnership than are generally afforded to unrelated third parties in comparable transactions. Such transactions include, without limitation, the purchase or sale by the Partnership of an investment, or an interest therein, from or to any member of the Baum Entities acting as principal. With respect to any investment purchased by the Partnership from a member of the Baum Entities acting as principal, the Partnership will acquire the investment for no more than the fair value at the time of purchase, plus customary fees and expenses. The fair value at the time of such purchase may be more or less than the price paid by the member of the Baum Entities, depending on the

appreciation or depreciation in the particular investment.

16. Distributions of cash and securities will be made at the discretion of the General Partner. All distributions will be made to the Partners in proportion to their respective capital contributions. When distributing cash or securities or both to the Partners, the General Partner will be required to distribute the cash and securities to all Partners in the same proportions. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership and a copy of the valuation will be delivered to each of the Partners.

17. The Partnership will not be permitted to incur indebtedness for borrowed money in an amount in excess of 10% of the sum of the cost basis of the Partnership's investments plus the sum of the remaining Commitments. The Partnership will not make loans to the Investor Fund or any other member of the Baum Entities, or any employee, officer, director, or advisory director of one of the Baum Entities.

18. A Limited Partner may not withdraw from the Partnership prior to the dissolution of the Partnership, except under certain limited circumstances. The General Partner may require a Limited Partner to withdraw if (a) the Limited Partner is a Defaulting Partner (as defined below), (b) the Limited Partner violates the restrictions on transfer described below, or (c) if the General Partner determines in its reasonable discretion that continued membership of the Limited Partner in the Partnership would subject the Partnership to material onerous legal or other regulatory requirements that cannot reasonably be avoided. In addition, a Limited Partner will cease to be a Limited Partner upon termination of employment with any of the Baum Entities, other than due to death, retirement, or permanent disability. If a Limited Partner terminates his or her employment with any of the Baum Entities for any reason, no further capital contributions will be made pursuant to the remaining uncalled Commitment and the holder of such interest will not participate in subsequent Partnership investments or pay subsequent management fees.

19. If a Limited Partner dies, retires after age 60, or becomes permanently disabled, the Partnership Agreement will provide that the Limited Partner (or his or her estate in the case of death) will continue to hold his or her interest. Upon termination of a Limited Partner's interest resulting from a termination of employment with the Baum Entities for any reason other than death, retirement,

or permanent disability, the Partnership Agreement will provide that the Partnership may redeem, in its discretion, that Limited the Partner's interest for cash and/or a promissory note. The amount payable to terminated Limited Partner will be the lower of (a) such Limited Partner's capital account balance on the date of termination or (b) the then fair value (as determined by the General Partner) of the interest.

20. Interests in the Partnership will be non-transferable except with the prior written consent of the General Partner, which consent may be withheld in its sole discretion, and in any event, will not be transferable to persons other than (a) other Partners or Eligible Officers, (b) trusts established by the transferor Limited Partner primarily for the benefit of such Limited Partner or such Limited Partner's immediate family, or (c) by succession or testamentary disposition upon the death of the transferor Limited Partners.

21. During the existence of the Partnership, books of account will be kept, in which the General Partner will enter, or cause to be entered, all business transacted by the Partnership and all moneys and other things received, advanced, paid out, or delivered on behalf of the Partnership, the results of the Partnership's operations, and each partner's capital. Such books will at all times be accessible to all Partners at the Partnership's principal place of business during normal working hours.

Applicant's Legal Analysis

1. The Partnership requests an exemption under section 6(b) and 6(e) of the Act from all provisions of the Act and the rules and regulations thereunder except section 9, certain provisions of section 17 and 30, and sections 36 through 53.

2. Section 6(b) of the Act provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) of the Act defines an employee's security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers or by former employees of such employers; or by members of the immediate family of such employers, persons on retainer, or former employees.

3. Section 6(e) of the Act provides that in connection with any order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons

in their transactions and relations with such company, as though such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

4. Section 17(a) of the Act provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company acting as principal, knowingly to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other property. The Partnership requests an exemption from section 17(a) to the extent necessary to: (a) permit a member of the Baum Entities, acting as principal, to engage in any transaction with the Partnership or any company controlled by the Partnership; (b) permit the Partnership to invest in or engage in any transaction with any entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership or any member of the Baum Entities has invested or will invest or (ii) with which the Partnership, any company controlled by the Partnership or any member of the Baum Entities is or will become otherwise affiliated; and (c) permit a Non-Baum Investor Fund Partner, acting as principal, to engage in any transaction with the Partnership or any company controlled by the Partnership. The transaction in which the Partnership is a party will be effected only after a determination by the Adviser and the General Partner that the requirements of condition 1 below have been satisfied.

5. The principal reason for the requested exemption is to ensure that the Partnership will be able to invest in companies, properties, or vehicles in which a member of the Baum Entities or the Baum Entities' individual employees, officers, directors or advisory directors, or the partners of the Investor Fund may make or have already made an investment. In addition, relief is requested to permit the Partnership the flexibility to deal with the Portfolio Companies in the manner the General Partner deems most advantageous to all Partners or as required by the Investor Fund or the Partnership's other co-investors.

6. The Partners will have been fully informed of the possible extent of the Partnership's dealings with the Investor Fund, another member of the Baum Entities, or with a Non-Baum Investor Fund Partner and, as successful professionals employed in the securities business, will be able to understand and evaluate the attendant risks. The

Partnership believes that the community of interest among the Partners, on the one hand, and the Investor Fund or another member of the Baum Entities or the Non-Baum Investor Fund Partners, on the other hand, is the best insurance against any risk of abuse in this regard.

7. Section 17(d) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person in contravention of such rules and regulations as the SEC may prescribe for the purpose of limiting or preventing participation by such companies. Rule 17d-1 under section 17(d) prohibits most joint transactions unless approved by order of the SEC.

8. The Partnership requests an exemption from section 17(d) and rule 17d-1 to the extent necessary to permit affiliated persons of the Partnership (including without limitation the General Partner, the Investor Fund, and other members of the Baum Entities) or affiliated persons of any of these persons (including without limitation of the Non-Investor Fund Partners) to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Partnership or a company controlled by the Partnership is a participant. The exemption requested would permit, among other things, co-investments by individual partners or employees, officers, directors, or advisory directors of the Baum Entities with the Partnership.

9. Compliance with section 17(d) would prevent the Partnership from achieving its only investment purpose. Because of the number and sophistication of the potential Partners and persons affiliated with such Partners, compliance with section 17(d) would cause the partnership to forego investment opportunities simply because a Partner or other affiliated person of the Partnership (or any affiliate of such a person) also had, or contemplated making, a similar investment. In addition, the Partnership asserts that it is the existence of the Investor Fund and the Baum Entities' experience in structuring transactions which will result in the Partnership having the opportunity to make attractive investments. As a result, the only way in which the Partnership will be able to participate in such opportunities will be to co-invest with its affiliates.

10. The flexibility to structure co-investments and joint investments in

the manner described above will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent. The concern that permitting co-investments or joint investments by the Investor Fund or another member of the Baum Entities or by the Non-Baum Investor Fund Partners on the other, might lead to less advantageous treatment of the Partnership should be mitigated by the fact that: (a) the Baum Entities, in addition to their interest through the General Partner, the Investor Fund's general partner, the Investor Fund, and the Partnership, will be acutely concerned with their relationship with the personnel who invest in the Partnership; and (b) senior officers and directors of the Baum Entities will be investing in the Partnership.

11. Section 17(f) of the Act provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. The Partnership requests an exemption from section 17(f) and rule 17f-1 to the extent necessary to permit a member of the Baum Entities to act as custodian without a written contract. Because there is such a close association between the Partnership and the Baum Entities, requiring a detailed, written contract would expose the Partnership to unnecessary burden and expense. Further, any securities of the Partnership which will be held by the Baum Entities will have the protection of fidelity bonds. An exemption is requested from the terms of rule 17f-1(b) (4), as the partnership does not believe that the expense of retaining an independent accountant to conduct periodic verifications is warranted given the community of interest of all the parties involved and the existing requirement for an independent annual audit.

12. Section 17(g) of the Act and rule 17g-1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. The Partnership requests an exemption from section 17(g) and rule 17g-1 to the extent necessary to permit the Partnership to comply with rule 17g-1 without the necessity of having a majority of the managers of the General Partner who are not "interested persons" take such actions and make such approvals as are set forth in rule 17g-1. Because all of the managers of the General Partner will be affiliated persons, without the requested relief, the Partnership could not comply with

rule 17g-1. The Partnership will except for the requirements of such approvals by "not interested" persons, otherwise comply with rule 17g-1.

13. Section 17(j) of the Act and rule 17j-1 make it unlawful for certain enumerated persons to engage in fraudulent, deceitful, or manipulative practices in connection with the purchase or sale of a security held or to be acquired by an investment company. Rule 17j-1 also requires every registered investment company, its adviser, and its principal underwriter to adopt a written code of ethics with provisions reasonably designed to prevent fraudulent activities, and to institute procedures to prevent violations of the code. The Partnership requests an exemption from section 17(j) and rule 17j-1 (except rule 17j-1(a)) because the requirements contained therein are burdensome and unnecessary. Requiring the Partnership to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time consuming and expensive, and would serve little purpose in light of, among other things, the community of interest among the Partners by virtue of their common association in the Baum Entities and the substantial and largely overlapping protections afforded by the conditions with which the Partnership has agreed to comply. Accordingly, the Partnership believes that the requested exemption is consistent with the purposes of the Act because the dangers against which section 17(j) and rule 17j-1 are intended to guard will not be present.

14. Sections 30(a), (b), and (d), and the rules under these sections, generally require that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. The Partnership asserts that the forms prescribed by the SEC for periodic reports have little relevance to the Partnership and would entail administrative and legal costs that outweigh any benefit to the Limited Partners. Exemptive relief is requested to the extent necessary to permit the Partnership to report quarterly and annually in the manner referred to above. An exemption also is requested from section 30(f) to exempt the General Partner, Adviser, employees and managers of the General Partner and the Adviser, and any other persons who may be deemed members of an advisory board of the Partnership from filing forms 3, 4, and 5 under section 16 of the Exchange Act with respect to their ownership of interests in the Partnership.

15. The Partnership believes that the exemptions requested are consistent with the protection of investors in view of the substantial community of interest among all the parties and the fact that the Partnership will be an "employees' securities company" as that term is defined in section 2(a)(13).

16. The Partnership states that each Eligible Officer will be equipped by experience and education to understand and evaluate the structure, management, and plan of the Partnership as compared to other investment opportunities, to understand and evaluate the risks of investing in the Partnership, and to understand that the Partnership is being offered without registration under the Act and the Securities Act and the protections afforded thereby.

Applicant's Conditions

The Partnership agrees to comply with the following as conditions if the requested order is granted:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d-1 to which the Partnership is a party (the "Section 17 Transactions") will be effected only if the General Partner determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners and do not involve overreaching of the Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners, the Partnership's organizational documents, and the Partnership's reports to its Partners. In addition, the General Partner will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnership, and at least two years thereafter, and will be subject to examination by the SEC and its staff.²

2. In connection with the Section 17 Transactions, the General Partner, will adopt and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter or principal underwriter for the Partnership, or any affiliated person of such a person, promoter or principal underwriter.

² The Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

3. The General Partner will not invest the funds of the Partnership in any investment in which a "Co-Investor" has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, and on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor" means any person who is: (a) an "affiliated person" (as such term is defined in the Act) of the Partnership; (b) a member of the Baum Entities; (c) an officer or director of one or more of the Baum Entities; or (d) a company in the General Partner or Adviser acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities (including without limitation other Investor Fund). The restrictions contained in this condition 3, however, shall not be deemed to limit to prevent the disposition of an investment by a Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor in a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any such family member; (c) when the investment is comprised of securities that are listed of any exchange registered as a national securities exchange under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11As2-1 thereunder.

4. The Partnership and the General Partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, such accounts, books and other document as constitute thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Partner and each annual report of the Partnership required to be sent to the Partners, and agree that all

such records will be subject examination by the SEC and its staff.³

5. The General Partner will send to each Partner who had a capital account interest in the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of such fiscal year in a manner consistent with customary practice with respect to the valuation of assets of the Kind held by the Partnership. In addition, within 90 days after the end of each fiscal year of the Partnership or as soon as practicable thereafter, the General Partner shall send a report to each person who was a Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Partner of his, her, or its federal and state income tax returns and a report of the investment activities of the Partnership during such year.

6. In any case where purchases or sales were made by the Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in such entity by an advisory director, director, officer, or employee, of any one or more of the Baum Entities, such individual will not participate in the Partnership's determination of whether or not to effect such purchase or sale.

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

Jonathan G. Katz,

Secretary.

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[Release No. 34-37314; File No. SR-DTC-96-08]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change To Establish a Custody Service for Certain Non-Depository Eligible Securities

June 14, 1996.

On April 2, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-96-08) pursuant to Section 19(b)(1) of the Securities

³ The Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.