

are members of a national securities exchange. The time needed for investment companies to comply with the requirements of the form is approximately nine minutes annually.

Form N-17f-2 is the coversheet for accountant examination certificates filed pursuant to rule 17f-2 under the 1940 Act by management investment companies maintaining custody of securities or other investments. The time needed for investment companies to comply with the requirements of the form is approximately nine minutes annually.

Form ADV-E is the coversheet for accountant examination certificates filed pursuant to rule 206(4)-2 under the Investment Advisers Act by investment advisers retaining custody of client securities or funds. Registrants each spend approximately three minutes annually to comply with the requirements of the form.

Rule 30b2-1 requires the filing of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its shareholders. The annual burden of filing the reports is estimated to be negligible.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the cost of SEC rules and forms.

Written comments are requested on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 6, 1997.

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 97-6421 Filed 3-13-97; 8:45 am]

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[Rel. No. IA-1617; 803-104]

**Brac Associates Limited Liability Company, et al.; Notice of Application**

March 7, 1997.

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

**ACTION:** Notice of application for exemption under the Investment Advisers Act of 1940 (the "Advisers Act").

*Applicants:* Brac Associates Limited Liability Company ("Brac") and Lexington Capital Partners, L.P. ("Lexington").

*Relevant Act Sections:* Order requested under section 205(e) of the Advisers Act for an exemption from section 205(a)(1) of the Advisers Act.

*Summary of Application:* Applicants are a limited liability company and a limited partnership that a family formed to facilitate and simplify the investment of its assets and multiple trusts established by family members. Applicants request an order to permit registered investment advisers to charge them performance-based advisory fees.

*Filing Dates:* The application was filed on August 29, 1996, and amended on February 12, 1997.

*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 April 2, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Antaeus Enterprises, Inc., Suite 3020, 420 Lexington Avenue, New York, New York 10170.

**FOR FURTHER INFORMATION CONTACT:** Brian T. Hourihan, Senior Counsel, at (202) 942-0526, or Mary Kay Frech, 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. Applicants were formed by the Beinecke family to facilitate and simplify the investment of Beinecke family assets and trusts established by Beinecke family members. Applicants are excepted from registration under the Investment Company Act of 1940 under section 3(c)(1). Applicants request an order under section 205(e) of the Advisers Act granting an exemption from section 205(a)(1) of the Advisers Act to permit registered investment advisers to charge them a performance-based advisory fee.

2. Brac and Lexington are essentially Beinecke family investment vehicles. Brac is a Delaware limited liability company that is owned by Antaeus Enterprises, Inc. ("Antaeus"), one individual Beinecke family member, and four irrevocable trusts (the trustees and beneficiaries of which are all Beinecke family members). Lexington is a Delaware limited partnership that is owned by Antaeus, four individual Beinecke family members, fifteen irrevocable trusts and one revocable grantor trust (the trustees and beneficiaries of which are all Beinecke family members), and two investment vehicles established by Mr. Robert L. Bael, a long-term family employee and an executive officer of Antaeus (together, the "Bael Partners").

3. Brac's managing member and Lexington's general partner, Antaeus, is responsible for making investment decisions for applicants. Antaeus is an investment management company owned by four trusts established by William Sperry Beinecke for the benefit of his four children. Antaeus acts as coordinator and administrator of the Beinecke family assets, including certain trusts. Antaeus invests in publicly traded and privately held fixed income and equity securities and investment partnerships, with a portion of its assets invested in applicants. No management, performance, or other fee is charged to the members of Brac or the limited partners of Lexington.

4. Applicants state that they want to participate in investment opportunities managed by registered investment advisers that seek to charge applicants a performance-based advisory fee pursuant to rule 205-3 of the Advisers Act. Applicants represent that neither themselves, Antaeus, any other Beinecke family member who acts as trustee of any Beinecke trust, any other Beinecke family member who is a beneficiary of any of the Beinecke trusts, nor any partner, trustee or beneficiary of the Bael Partners has any relationship with, or is an affiliate or an interested

person of, any such registered investment adviser.

5. All current members of Brac and the majority of limited partners of Lexington, as well as the general partner, have a net worth exceeding \$1,000,000 and thereby satisfy the client eligibility requirements of paragraph (b) of rule 205-3. However, nine trusts which are limited partners of Lexington fail individually to satisfy the net worth requirements of rule 205-3(b) (the "Non-qualifying Trusts").<sup>1</sup> Six of the Non-qualifying Trusts have been established on behalf of six of the grandchildren of William Sperry Beinecke, whose ages range from 7 to 17. The seventh Non-qualifying Trust is a grantor trust which was established by a seventh grandchild of William Sperry Beinecke upon reaching the age of majority. Such grandchildren are the ultimate beneficiaries of (a) the four trusts which own Antaeus, a corporation having assets with an estimated market value in excess of \$50 million, and (b) the trusts which are qualifying limited partners of Lexington. The eighth Non-qualifying Trust is a testamentary trust beneficially owned by the four adult children of William Sperry Beinecke, each of whom has assets in excess of \$1,000,000. The ninth Non-qualifying Trust is beneficially owned by the three adult children of Mr. Bael. Each of the Bael children is expected to be an eventual beneficiary of the estate of his or her parents to the extent of more than \$1,000,000. As a result of the limited partnership interests held by the Non-qualifying Trusts, Lexington may not be treated as satisfying the client eligibility requirements in paragraph (b) of rule 205-3.

6. Applicants request that any relief be applicable not only with respect to the Non-qualifying Trusts that are currently limited partners of Lexington, but also with respect to future Beinecke family trusts and custodianships under the Uniform Gift to Minors Act ("UGMA") having Beinecke family members as trustee or custodian, as applicable, that may become limited partners or members, as the case may be, of applicants in the future. Such future trusts and custodianships will comply with the representations set forth in the application.

#### Applicants' Legal Analysis.

1. Section 205(a)(1) of the Advisers Act generally prohibits a registered

<sup>1</sup> It is unlikely that the alternative requirement of having at least \$500,000 under the management of the investment adviser will be satisfied, because applicants invest their assets in multiple private investment companies.

investment adviser from receiving compensation on the basis of a share of capital gains in or capital appreciation of a client's account, or any portion thereof. Section 205(e) of the Advisers Act provides that the SEC may exempt any person or transaction, or any class or classes of persons or transactions from section 205(a)(1) of the Advisers Act if and to the extent that the exemption relates to an investment advisory agreement with any person that the SEC determines does not need the protection of section 205(a)(1), on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the SEC determines are consistent with section 205.

2. Rule 205-3 provides an exemption from the prohibition against performance-based compensation in section 205(a)(1) provided the conditions of the rule are satisfied. Paragraph (b)(1) of rule 205-3 requires each client entering into an investment advisory contract that provides for such compensation to be: (a) A natural person or a company who immediately after entering into the contract has at least \$500,000 under management of the investment adviser; or (b) a person who the registered investment adviser reasonably believes, prior to entering into the contract, is a natural person or a company whose net worth at the time the contract is entered into exceeds \$1,000,000. Paragraph (b)(2) of the rule provides that the term "company" does not include private investment companies such as applicants unless each of the equity owners is a natural person or a company, as defined therein, that meets the eligibility requirements of paragraph (b)(1) of the rule. A trust is expressly included in the definition of a "company." Applicants believe that a custodianship should be viewed as a type of trust for this purpose because, under UGMA, a custodian is a fiduciary whose duties and powers are similar to those of a trustee.

3. The client eligibility requirements of rule 205-3 reflect the SEC's recognition that certain high net worth clients have the capacity to bear the additional risks of performance fees, as well as the ability to protect themselves against the potential abuses of performance fees. Applicants are unable to rely on the rule because the Non-qualifying Trusts do not satisfy the \$500,000 under management or the \$1,000,000 net worth requirement. However, applicants believe that

exemptive relief is appropriate under and consistent with the purposes of section 205(a)(1) and complies with the factors specified in section 205(e) of the Advisers Act because: (a) Antaeus, the entity which makes the investment decisions for applicants, satisfies the net worth requirement, is financially sophisticated with very substantial knowledge of and experience in financial matters, and is fully able to assess the potential risks of performance fees; (b) each trustee of the Non-qualifying Trusts is a family member of the beneficiaries thereof who, in addition to possessing a high level of financial sophistication and very substantial knowledge of and experience in financial matters, have substantial personal wealth, entitlements or expectancies invested in applicants, and may reasonably be presumed to be acting in the best interests of the beneficiaries who are their close family members; and (c) the beneficiaries of the Non-qualifying Trusts have the financial means to bear the potential risks of performance fees, because each satisfies the net worth requirement if his or her entitlements and expectancies are aggregated for this purpose, and do not have a relationship with prospective registered investment advisers.

4. Because those executing investment authority for the Non-qualifying Trusts have such strong and intimate familial relationships to the beneficiaries, applicants believe that it is not unreasonable to presume that the commonality of such interest will result in the decision-maker behaving in the best interests of the beneficiaries. Except for the requested exemption for the Non-qualifying Trusts and custodianships, the requirements of rule 205-3 are satisfied in all respects. Thus, applicants believe that granting the requested exemption is appropriate under and consistent with the purposes of section 205(a)(1) and the factors specified in section 205(e).

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97-6420 Filed 3-13-97; 8:45 am]

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[Rel. No. IC-22549; 812-10328]

**Great-West Life & Annuity Insurance Company, et al.**

March 10, 1997.

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