

Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 8, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the

proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to General Counsel, Tennessee Valley Authority, ET 10H, 400 East Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 29, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 1st day of May 1998.

For the Nuclear Regulatory Commission

Robert E. Martin,

Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-12179 Filed 5-6-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23167; 812-10392]

Extended Stay America, Inc.; Notice of Application

April 30, 1998.

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

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

SUMMARY OF APPLICATION: Applicant Extended Stay America, Inc. requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing,

reinvesting, owning, holding, or trading in securities.

FILING DATES: The application was filed on October 11, 1996, and amended on June 4, 1997, and April 14, 1998.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 26, 1998, and should be accompanied by proof of service on applicant, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 450 East Las Olas Boulevard, Suite 1100, Fort Lauderdale, Florida 33301.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942-0571, 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 [450 5th Street, NW., Washington, DC 20549; (202) 942-8090].

Applicant's Representations

1. Applicant was incorporated in the state of Delaware for the purpose of developing, owning, and managing extended stay lodging facilities that are designed to appeal to value-conscious guests. Applicant's EXTENDED STAYAMERICA Efficiency Studios brand of lodging facilities is designed to offer quality accommodations to guests at substantially lower rates than most other extended stay lodging providers. Applicant's facilities feature fully furnished rooms that are rented generally on a weekly basis to guests such as business travelers, professionals on temporary work assignment, persons between domestic situations, and persons relocating or purchasing a home, with most guests staying for multiple weeks.

2. Applicant's goal is to become a national provider of economy extended stay lodging. Applicant intends to achieve this goal by rapidly developing

properties in selected markets, providing high value accommodations for its guests, actively managing its properties to increase revenues and reduce operating costs, and increasing awareness of the economy extended stay concept. Applicant's Crossland Economy Studios, EXTENDED STAYAMERICA Efficiency Studios, and StudioPLUS Deluxe Studios brands of lodging facilities compete in the budget, economy, and mid-price segments, respectively, of the extended stay lodging market.

3. The development cycle for a lodging facility from identification of a suitable site through completion of construction and commencement of operations is eighteen to twenty-four months. To ensure that applicant is able to meet its financial obligations for the development of these facilities and to facilitate the planned rapid growth of applicant, applicant has raised a significant amount of money since its organization in 1995. Applicant has raised, in addition to its \$60 million of initial development capital, \$572 million in aggregate net proceeds from offerings of common stock in December 1995 and June 1996 and the private placement of common stock in February 1997. In addition, in March 1998, applicant consummated an offering of senior subordinated notes that raised approximately \$194 million in cash, and increased and restructured its bank credit facility, pursuant to which applicant is required to borrow an additional \$250 million over the next several months. Pending the use of this money to finance capital expenditures and current operations, the money has been invested in high quality short-term investments. Applicant represents that, depending upon market conditions, it may raise additional capital and/or conduct additional financings that would have the effect of substantially increasing its short-term investments.

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Section 3(a)(2) of the Act defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries

of the owner which are not investment companies and which are not excepted from the definition of investment company by section 3(c)(1) or section 3(c)(7) of the Act.

2. Section 3(b)(1) of the Act provides that, notwithstanding section 3(a)(1)(C), any issuer primarily engaged in a business or businesses other than investing, reinvesting, owning, holding, or trading in securities is not an investment company. Applicant believes that it qualifies for the exemption under section 3(b)(1). Applicant states that the application was filed, nonetheless, because others might view differently the facts or the applicability of certain provisions of the Act to those facts.

3. Section 3(b)(2) of the Act provides that the SEC may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

4. Applicant states that approximately 0.1% of its total assets as of December 31, 1997 consisted of investment securities. Applicant believes that this percentage may rise above 40% following subsequent fundraising and pending utilization of those funds in its operations.¹ Applicant seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities, and therefore is not an investment company within the meaning of the Act.

5. In determining whether a company is "primarily engaged" in a non-investment company business under section 3(b)(2), the SEC considers the following factors: (a) the company's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.²

a. *Historical Development.* Applicant contends that its efforts during its brief history have been devoted solely towards the development of its extended stay lodging business. As of December 31, 1997, applicant had 185 operating facilities, 84 facilities under construction, and 146 sites under option. Applicant states that it has raised a significant amount of money since its organization in 1995 to ensure

¹ Applicant states that it will not be able to rely on rule 3a-1 under the Act in the future without changing significantly the way it does business and sharply curtailing its expansion plans so that it can meet the asset and income tests of the rule.

² See *Tonopah Mining Company of Nevada*, 26 S.E.C. 426, 427 (1947).

that it is able to meet its financial obligations for the development of its extended stay facilities and to facilitate its planned rapid growth. Applicant states that pending the use of that money to finance capital expenditures and current operations, the money has been invested in high quality short-term investments.

b. *Public Representations of Policy.* Applicant asserts that it has not made any public representations that would suggest that it is engaged in any business other than its extended stay lodging business. Applicant states that its prospectuses, reports to shareholders, and other filings with the SEC have exclusively focused on its lodging business. Applicant also states that all of its marketing and advertising has focused entirely on its extended stay lodging business.

c. *Activities of Officers and Directors.* Applicant represents that its directors and executive officers dedicate virtually all of their efforts toward furthering applicant's efforts in developing, owning, and managing extended stay lodging facilities. Applicant has approximately 2,900 employees. Applicant states that its short-term investments are managed by an assistant to its Chief Financial Officer. Applicant represents that the assistant devotes less than 25% of his working time to these activities, and the Chief Financial Officer spends less than 2% of his time supervising that activity. Applicant states that no other employee is involved in the management of the short-term investments.

d. *Nature of Assets.* Applicant indicates that its short-term investments, which are limited to bank deposits, U.S. Government securities, and short-term, high quality fixed income corporate/Government obligations maturing in less than 90 days from the date of investment, constituted approximately 0.1% of applicant's total assets as of December 31, 1997. Applicant also represents that if the proceeds of its March 1998 financings had been included in applicant's assets at December 31, 1997, applicant would have had short-term investments of approximately 29% of its total assets. Furthermore, applicant asserts that, depending upon market conditions, it may raise additional capital and/or conduct additional financings that would increase substantially the ratio of its short-term investments to total assets. Applicant states that its short-term investments and total assets are valued at fair value in accordance with the requirements of section 2(a)(41) of the Act.

e. *Sources of Income.* Applicant indicates that, as of December 31, 1997, it derived approximately 0.8% of its total revenues from investment income. Applicant states that it may significantly increase its short-term investments, as well as the ratio of income from these investments to total revenues, if it conducts additional capital raising transactions or financings.

6. Applicant thus believes that it meets the factors that the SEC considers in determining whether an issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23166]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 30, 1998.

The following is a notice of applicants for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April, 1998. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549 (tel. 202-942-8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 26, 1998, and should be accompanied by proof of service on the applicant, 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 Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. For Further Information Contact: Diane L. Titus, at (202) 942-0564, SEC, Division of Investment Management, Office of Investment Company

Regulation, Mail Stop 5-6, 450 Fifth Street, N.W., Washington, DC 20549.

InterCapital Managed Municipal Trust [File No. 811-7187], TCW/DW Term Trust 2001 [File No. 811-8222], TCW/DW Emerging Markets Government Income Trust [File No. 811-8310]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Each applicant has never made a public offering of its shares and does not propose to make a public offering or engage in business of any kind.

Filing Dates: Each application was filed on March 24, 1998.

Applicants' Address: Two World Trade Center, New York, New York 10048.

Putnam Capital Growth and Income Fund [File No. 811-7063]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 6, 1995, applicant made a liquidating distribution to its sole shareholder of record at net asset value. All other shareholders redeemed or exchanged their shares of applicant at net asset value prior to February 6, 1995.

Applicant did not incur any expenses in connection with the liquidation, and unamortized organizational expenses were paid by applicant's investment adviser.

Filing Dates: The application was filed on October 3, 1995 and amended on April 2, 1996, September 17, 1996 and March 17, 1998.

Applicant's Address: One Post Office Square, Boston, MA 02109.

Fortis Benefits Separate Account A [File No. 811-2445]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant is a separate account organized as a unit investment trust. No assets are currently retained in Applicant; all assets were redeemed at net asset value. No expenses were incurred by Applicant in connection with the redemption of its assets.

Filing Date: The application was filed on March 23, 1998.

Applicant's Address: 500 Bielenberg Drive, Woodbury, MN 55125.

Fortis Benefits Separate Account B [File No. 811-2446]

Summary: Applicant seeks an order declaring that it has ceased to be investment company. Applicant is a separate account organized as a unit investment trust. No assets are currently retained in Applicant; all assets were