3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair as required by rule 17e–1(a). Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of those persons. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser, although under contract to manage only a Portion of a Multi-Managed Fund, is considered an investment adviser to the entire Multi-Managed Fund. As a result, applicants believe that all purchases of securities by an Unaffiliated Portion from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Multi-Managed Fund. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of the Adviser, principal underwriter or promoter of the Multi-Managed Fund, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Multi-Managed Fund, or any officer, trustee or employee of the Multi-Managed Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Managed Fund because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for ''dumping.'' In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

Applicants' Conditions

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

1. Each Multi-Managed Fund relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, or Affiliated Underwriter (except by virtue of serving as Subadviser to a Portion) will be an affiliated person or a second-tier affiliate of the Adviser, any Unaffiliated Subadviser, principal underwriter or promoter of the Multi-Managed Fund, or any officer, trustee, or employee of a Multi-Managed Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 under the Act will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–3863 Filed 2–15–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25416; 812–12476]

Frank Russell Investment Company, et al.; Notice of Application

February 12, 2002.

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

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under section 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Summary of Application: The requested order would permit (a) certain registered open-end investment companies to use uninvested cash and cash collateral to purchase, in kind or for cash, shares of one or more affiliated money market funds, and the money market funds to sell shares to, and redeem shares from, the investment companies, and (b) the investment companies and the money market funds

to continue to engage in transactions involving portfolio securities in reliance on rule 17a-7 under the Act. The requested order would supersede a prior order.[1]

Applicants: Frank Russell Investment Company (''FRIC''); Russell Insurance Funds (''RIF''); the currently existing series of FRIC and RIF, and all future registered open-end management investment companies and any series thereof that are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as FRIC and RIF and for which Frank Russell Investment Management Company (''Russell'') or a person controlling, controlled by, or under common control with Russell (a ''Russell Adviser'') serves as investment adviser (FRIC, RIF, all currently existing series of FRIC and RIF, and all such future registered open-end management investment companies and series thereof together, the ''Funds''); Russell; and Russell Fund Distributors, Inc. (''Distributor'').

Filing Dates: The application was filed on March 9, 2001 and amended on September 19, 2001 and January 31, 2002.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 11, 2002, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Frank Russell Company, 909 A Street, Tacoma, WA 98402.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, at (202) 942–0553, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102, at (202) 942–8090.

Applicants' Representations

1. FRIC and RIF are Massachusetts business trusts registered under the Act as open-end management investment companies. RIF consists of five separate series. RIF shares are offered exclusively to insurance companies and to their separate accounts to fund variable insurance products. FRIC consists of 31 separate series, three of which are money market Funds that comply with rule 2a-7 under the Act (each a ''Money Market Fund'' and together with any future FRIC or RIF series that is a money market Fund complying with rule 2a-7 under the Act, the ''Money Market Funds'').[2] Russell, an investment adviser registered under the Investment Advisers Act of 1940, is the investment adviser to each series of FRIC and RIF pursuant to an investment advisory agreement (''Advisory Agreement'').[3] Distributor, a wholly-owned subsidiary of Russell, serves as distributor for each series of FRIC and RIF.

2. Funds that are not Money Market Funds (the ''Investing Funds'') have, or may be expected to have, uninvested cash. Such cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments or new monies received from investors (''Uninvested Cash''). Certain of the Funds also may participate in a securities lending program under which they loan their portfolio securities to certain member banks of the Federal Reserve System and certain primary dealers in U.S. government securities (such program, a ''Securities Lending Program''). The loans are secured by collateral, equal at all times to at least the market value of the securities loaned (such collateral, when in the form of cash, ''Cash Collateral'' and together, with Uninvested Cash, ''Cash Balances''). Applicants request an order to permit the Investing Funds to use their Cash Balances to purchase shares of one or more of the Money Market Funds, the Money Market Funds to sell their shares to and redeem their shares from the Investing Funds, and Russell to effect these transactions.

3. Applicants state that certain Funds currently engage in purchase and sale transactions with other Funds in reliance on rule 17a–7 under the Act (''Interfund Transactions''). Applicants seek relief to permit these Interfund Transactions to continue in the event that the Investing Funds, pursuant to the requested order, use Cash Balances to purchase shares of the Money Market Funds and become affiliated persons, or affiliated persons of affiliated persons, of other Funds by virtue of owning more than 5% of a Money Market Fund. Applicants also seek relief to permit in-kind Interfund Transactions in which an Investing Fund, solely in instances where the Investing Fund holds portfolio securities that would be appropriate investments for a Money Market Fund, invests in a Money Market Fund by transferring such portfolio securities to the Money Market Fund, in exchange for shares of such Money Market Fund.

Applicants' Legal Analysis

I. Investment of Cash Balances in Money Market Funds

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's outstanding total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that

[1] *Frank Russell Investment Company, et al.,* Investment Company Act Release Nos. 22819 (Sept. 12, 1997) (notice) and 22845 (Oct. 8, 1997) (order) (''Prior Order'').

[2] All existing Funds that currently intend to rely on the requested order are named as applicants. Applicants also request that the order extend to Russell's successor(s) in interest, which are entities that result from a reorganization of the entity into another jurisdiction or a change in the type of business organization of the entity.

[3] Under the Advisory Agreement, in addition to the advisory fee, Russell may collect an annual fee (the ''Collateral Investment Fee'') for supervising the investment of the Cash Collateral, as defined below, of the Funds that are series of FRIC, based on such assets not being treated as net assets of a Fund for purposes of determining the net asset value per share of such Fund.

such exemption is consistent with the public interest and the protection of investors.

3. Applicants request relief under section 12(d)(1)(J) to permit the Investing Funds to use their Cash Balances to acquire shares of the Money Market Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases an Investing Fund's aggregate investment of Uninvested Cash in shares of the Money Market Funds will not exceed 25% of the Investing Fund's total assets at any time. Applicants also request relief to permit the Money Market Funds to sell their shares to the Investing Funds in excess of the percentage limitations in section 12(d)(1)(B).

4. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that there is no threat of redemption to gain undue influence over the Money Market Funds due to the highly liquid nature of each Money Market Fund's portfolio. Applicants also note that Russell or a Russell Adviser will serve as investment adviser to all of the Funds. Applicants state that the proposed arrangement will not result in inappropriate layering of either sales charges or investment advisory fees. Shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee. If a Money Market Fund offers more than one class of shares in which an Investing Fund may invest, the Investing Fund will invest its Cash Balances only in the class with the lowest expense ratio at the time of the investment. In connection with approving any advisory contract for an Investing Fund, its board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), will consider to what extent, if any, the advisory fees and any Collateral Investment Fee charged to the Investing Fund by Russell or the Russell Adviser to the Investing Fund should be reduced to account for reduced services provided to the Investing Fund by Russell or the Russell Adviser to the Investing Fund as a result of Cash Balances being invested in the Money Market Funds. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

5. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote by the other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to an investment company. Because the Investing Funds and the Money Market Funds have Russell as an investment adviser, and because all of the Funds have a Russell Adviser, they may be deemed to be under common control and thus affiliated persons of each of the other Funds. In addition, if an Investing Fund purchases more than 5% of the voting securities of a Money Market Fund, the Investing Fund and Money Market Fund may be affiliated persons of each other. As a result of these affiliations, section 17(a) would prohibit the sale of shares of Money Market Funds to the Investing Funds, and the redemption of such shares by Money Market Funds.

6. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if 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 the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act, if the 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. Applicants submit that their request for relief to permit the purchase of shares of the Money Market Funds by the Investing Funds, and the redemption of the shares of the Money Market Funds, satisfies the standards in sections 6(c) and 17(b). Applicants state that the Investing Funds will retain their ability to invest their Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies. Similarly, a Money Market Fund has the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's board of trustees or investment adviser determines that such sale would adversely affect its portfolio management and operations. In addition, applicants note that shares of the Money Market Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder.

C. Section 17(d) of the Act and Rule 17d–1 Under the Act

8. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has approved the joint arrangement. Applicants state that the Investing Funds and the Money Market Funds, by participating in the proposed transactions, and Russell, by effecting the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

9. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies and purposes of the Act and the extent to which participation in the joint enterprise is on a basis different from or less advantageous than that of other participants. Applicants state that, for the reasons discussed above, the proposed transactions meet the standards for an order under rule 17d–1.

II. Interfund Transactions

10. As noted above, section 17(a) of the Act would prohibit the purchase and sale of portfolio securities between the Funds. Rule 17a–7 under the Act provides an exemption from section 17(a) for a purchase and sale transaction between a registered investment company and an affiliated person (or an affiliated person of an affiliated person), provided certain conditions are met, including that the affiliation between the registered investment company and the affiliated person (or an affiliated person of the affiliated person) must exist solely by reason of the entities

having a common investment adviser, common directors and/or common officers and the transaction must be for no consideration other than cash. Applicants state that the Funds may not be able to rely on rule 17a–7 when purchasing or selling portfolio securities to other Funds, and that the Investing Funds may not be able to rely on rule 17a–7 to effect in-kind purchases of shares of the Money Market Funds, because some of the Investing Funds may own more than 5% of the outstanding voting securities of a Money Market Fund and, therefore, an affiliation would not exist solely by reason of the transacting Funds having a common investment adviser, common directors and/or common officers. In addition, in-kind purchases of shares of a Money Market Fund by an Investing Fund would not meet the cash payment requirement of rule 17a–7(a).

11. Applicants request relief under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that, with respect to the Investing Funds' in-kind purchases of shares of the Money Market Funds, the consideration paid by the Investing Funds for shares of the Money Market Funds will be based on the net asset value of the Money Market Funds. With respect to the purchase and sale of portfolio securities between the Funds, applicants state that the price paid for the securities will be the current market price of the securities. Further, applicants state that the Interfund Transactions will comply with rule 17a–7 under the Act in all respects other than (i) the requirement that the parties to the transactions be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers that are affiliated persons of each other, common officers and/or common directors, solely because the Investing Funds and the Money Market Funds might become affiliated persons within the meaning of sections 2(a)(3)(A) and (B) of the Act and (ii) the requirement that the transactions be for no consideration other than cash, solely because certain of the Interfund Transactions may be effected in shares of a Money Market Fund.

Applicants' Conditions

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

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers).

2. No Money Market Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. Each of the Investing Funds will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that such Investing Fund's aggregate investment of Uninvested Cash in all of the Money Market Funds does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Each Investing Fund and each Money Market Fund relying on the order will be advised by Russell or a Russell Adviser.

5. Investment by an Investing Fund in shares of a Money Market Fund will be in accordance with each Investing Fund's respective investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

6. At or before the next meeting of a Board is held for the purpose of voting on an Advisory Agreement under section 15 of the Act, Russell or the Russell Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to Russell or the Russell Adviser to the Investing Fund of, or portion of the advisory fee and any Collateral Investment Fee under the existing Advisory Agreement attributable to, managing the Cash Balances of the Investing Fund that can be expected to be invested in the Money Market Funds. In connection with approving any Advisory Agreement for an Investing Fund, the Board, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fees and any Collateral Investment Fee charged to the Investing Fund by Russell or the Russell Adviser to the Investing Fund should be reduced to account for any change in the services provided to the Investing Fund by Russell or the Russell Adviser to the Investing Fund as a result of Cash Balances being invested in the Money Market Funds. The minute books of the Investing Fund will record fully the Board's consideration in approving the Advisory Agreement, including the considerations referred to above.

7. Before a Fund may participate in the Securities Lending Program, a majority of the Board (including a majority of the Independent Trustees) will approve the Fund's participation in the Securities Lending Program. No less frequently than annually, the Board also will evaluate, with respect to each Investing Fund, any securities lending arrangement and its results and determine that any investment of Cash Collateral in the Money Market Funds is in the best interests of the shareholders of the Investing Fund.

8. To engage in Interfund Transactions, the Investing Funds and Money Market Funds will comply with rule 17a–7 under the Act in all respects other than (i) the requirement that the parties to the transactions be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers that are affiliated persons of each other, common officers and/or common directors, solely because the Investing Funds and the Money Market Funds might become affiliated persons within the meaning of sections 2(a)(3)(A) and (B) of the Act and (ii) the requirement that the transactions be for no consideration other than cash, solely because certain Interfund Transactions may be effected in shares of a Money Market Fund.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3864 Filed 2–15–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45431; File No. SR–NASD–2002–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Clarify the Income-Based Listing Standards of The Nasdaq Stock Market

February 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2002, the National Association of Securities Dealers, Inc. (''NASD''),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.