

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24563; 812-11956]

Colchester Street Trust, et al.; Notice of Application

July 24, 2000.

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

ACTION: Notice of application for an order under (a) section 6(c) of the Investment Company Act of 1940 (the "Act") for exemptions from sections 18(f) and 21(b); (b) sections 6(c) and 17(a) for exemptions from sections 17(a)(1) and 17(a)(3); (c) section 12(d)(1)(J) for an exemption from section 12(d)(1); and (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order that would amend a prior order ("Prior Order")¹ that permits an interfund lending and borrowing facility.

Applicants: Colchester Street Trust, Fidelity Aberdeen Street Trust, Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Beacon Street Trust, Fidelity Boston Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Concord Street Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Covington Trust, Fidelity Destiny Portfolios, Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Garrison Street Trust, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, Fidelity Oxford Trust, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity Revere Street Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Summer Street Trust, Fidelity Trend Fund,

Fidelity Union Street Trust II, Newbury Street Trust, Variable Insurance Products Fund, Variable Insurance Products Fund II, Variable Insurance Products Fund III (collectively, the "Funds"); Fidelity Management & Research Company (together with any person controlling, controlled by, or under common control with Fidelity Management & Research Company ("FMR"); and all other registered open-end management investment companies for which FMR serves as investment adviser.²

Filing Dates: The application was filed on January 31, 2000, and an amendment was filed on July 14, 2000.

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 August 18, 2000, 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.

ADDRESS: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Special Counsel, at (202) 942-0572, or Nadya B. Roytblat, Assistant Director, 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 at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549-0102 (tel. (202) 942-8090).

Applicants' Representations

1. Each Fund is registered under the Act as an open-end management investment company and currently is organized as either a Massachusetts or Delaware business trust. Certain of the Funds are organized as series

investment companies. FMR acts as each Fund's investment adviser. Fidelity Management & Research Company is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act").

2. The Prior Order permits the Funds to participate in a joint lending and borrowing facility under certain conditions ("Credit Facility"). The Credit Facility enables the Funds to lend money to each other for temporary purposes, such as when redemptions exceed anticipated levels ("Interfund Loans"). The Credit Facility is designed both to reduce the cost of borrowing for the Funds and enhance the lending Fund's ability to earn higher rates of interest on investment of their short-term balances. The Prior Order requires that the interest rate for loans made through the Credit Facility ("Interfund Loan Rate") be based on the average of the current rate of overnight repurchase agreements (the "FICASH Rate")³ and a benchmark rate representing the lowest bank loan rate available to the Funds ("Bank Loan Rate"). Applicants request an order amending the Prior Order to permit FMR to calculate the Interfund Loan Rate as the average of (a) the higher of the overnight time deposit rate (the "OTD Rate") and the FICASH Rate, and (b) the Bank Loan Rate.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person, or affiliated person of an affiliate person ("second-tier affiliate"), from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(c) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be deemed to be under common control because they either

³ FICASH is a joint account that was established pursuant to SEC exemptive orders. In the Matter of Daily Money Fund, *et al.*, Investment Company Act Releases Nos. 11962 (Sept. 29, 1981) (notice) and 12061 (Nov. 27, 1981) (order); In the Matter of Daily Money Fund, *et al.*, Investment Company Act Release Nos. 19594 (July 26, 1993) (notice) and 19647 (Aug. 23, 1993) (order). Pursuant to these orders, during each trading day, the Funds' cash balances may be deposited in FICASH. FICASH invests these cash balances in one or more large, short-term repurchase agreements. FMR administers FICASH as part of its duties under its existing advisory contract with each of the Funds, and does not charge any additional fee for this service.

¹ Colchester Street Trust, *et al.*, Investment Company Act Release Nos. 23787 (Apr. 15, 1999) (notice) and 23831 (May 11, 1999) (order).

² All existing investment companies that currently intend to rely on the requested order are named as applicants. Any other existing or future investment company that subsequently relies on the requested order will comply with the terms and conditions of the application.

share a common investment adviser or have an investment adviser that is under common control with the investment adviser of the other Funds.

2. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or a second-tier affiliate, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1).

3. Section 18(f)(1) of the Act prohibits an open-end investment company from issuing any senior security except that the company is permitted to borrow from any bank; provided that immediately after any such borrowing there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. The Prior Order granted relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

4. Section 17(b) of the Act authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Section 6(c) of the Act provides that an exemptive order may be granted where an 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. Section 12(d)(1)(f) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) of and to the extent such exception is consistent with the public interest and the protection of investors.

5. Section 17(d) of the Act and rule 17d-1 under the Act generally prohibit any affiliated person of a registered investment company, or second-tier affiliate, when acting as principal, from effecting any joint transaction in which the company participates unless the

transaction is approved by the SEC. Rule 17d-1 provides that in passing upon such applications, the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

6. Applicants request an order under (a) section 6(c) of the Act for exemptions from sections 18(f) and 21(b); (b) sections 6(c) and 17(a) for exemptions from sections 17(a)(1) and 17(a)(3); (c) section 12(d)(1)(f) for an exemption from section 12(d)(1); and (d) section 17(d) of the Act and rule 17d-1 under the Act. The requested order would amend the Prior Order to permit FMR to calculate the Interfund Loan Rate as the average of (a) the higher of the OTD Rate and the FICASH Rate, and (b) the Bank Loan Rate. Applicants state that the requested relief meets the standards for relief under sections 6(c), 12(d)(1)(f), and 17(b), and rule 17d-1.

7. Applicants state that the OTD Rate is at times a more accurate indicator of the actual overnight investment rate available to the lending Funds than the FICASH Rate. Applicants also state that using the higher of the OTD Rate and the FICASH Rate to calculate the Interfund Loan Rate will make it more likely that the lending Funds will receive a market rate of return in excess of other market alternatives while the borrowing Funds receive a loan rate lower than the Bank Loan Rate.

8. Applicants state that the Credit Facility will not involve any potential that one Fund might receive a preferential rate to the disadvantage of another Fund. Applicants assert that under the Credit Facility, rates will be set pursuant to a pre-established formula, approved the board of trustees of each Fund (the "Board"). Applicants state that all Funds participating in the Credit Facility on any given day will receive the same rate.

Applicants' Conditions

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

1. The interest rates to be charged to the Funds under the Credit Facility will be the average of (a) the higher of the OTD Rate and the FICASH Rate and (b) the Bank Loan Rate.

2. The cash management department of Fidelity Service Company, Inc. ("Cash Management Department") on each business day will compare the Interfund Loan Rate set pursuant to the

formula calculated as provided in condition 1 with the OTD Rate, the FICASH Rate negotiated that day, and all short-term borrowing rates quotes to any of the Funds by any bank with which any Fund has a loan agreement. At least three such quotations will be obtained each day in which any Fund borrows through the Credit Facility prior to such borrowing. The Cash Management Department will make cash available for Interfund Loans only if the Interfund Loan Rate is more favorable to the lending Fund than both the OTD Rate and the FICASH Rate and more favorable to the borrowing Fund than the lowest quoted Bank Loan Rate.

3. If a Fund has outstanding borrowings from one or more banks, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in no event over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan, it will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Loan agreement entitling the lending Fund to call the loan (and exercise all rights with respect to any collateral) and that the call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the Credit Facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the Credit Facility only on a secured basis. A Fund could not borrow through the Credit Facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33 1/3% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may,

through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Fund will within one business day afterwards: (a) Repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition will no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may loan funds through the Credit Facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund will be limited to 5% of the lending Fund's net assets.

8. The duration of the Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. All loans may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

10. A Fund's participation in the Credit Facility must be consistent with its investment policies and limitations and declaration of trust. No Fund may borrow through the Credit Facility unless the Fund has a fundamental policy that prevents the Fund from borrowing for other than temporary or

emergency purposes (and not for leveraging), except that certain Funds may engage in reverse repurchase agreements for any purpose.

11. The Cash Management Department will calculate total Fund borrowing and lending demand through the Credit Facility, and allocate loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Cash Management Department will not solicit cash for the Credit Facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Cash Management Department will invest amounts remaining after satisfaction of borrowing demand in FICASH or money market funds that are advised by FMR or return remaining amounts for investment directly by the portfolio managers of the Funds.

12. FMR will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make quarterly report to the Board and each Fund concerning the participation of the Funds in the Credit Facility and the terms and other conditions of any extensions of credit thereunder.

13. Each Fund's Board, including a majority of the trustees who are not interested persons of the Funds as defined in section 2(a)(19) of the Act ("Independent Trustees"), will: (a) Review, no less frequently than quarterly, the Fund's participation in the Credit Facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans, and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and (c) review, no less frequently than annually, the continuing appropriateness of the Fund's participation in the Credit Facility.

14. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Loan agreement, FMR will promptly refer the loan for arbitration to a retired Independent Trustee previously selected by the Board of each Fund, who no longer has any fiduciary responsibilities to any Fund, and who will serve as an arbitrator of disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The

arbitrator will submit, at least annually, a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

15. Each Fund will maintain and preserve, for a period of not less than six years from the end of the fiscal year in which any transaction under the Credit Facility occurred, the first two years in an easily accessible place, written records of all transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and commercial bank borrowings, and any other information presented to the Fund's Boards in connection with the review required by conditions 12 and 13.

16. Compliance with the conditions to any order issued on the application will be considered by the external auditors as part of their internal control procedures, performed in connection with Fund audit examinations, which form the basis, in part, of the auditors' report on internal accounting controls in Form N-SAR.

17. No Fund will be permitted to participate in the Credit Facility unless it has fully disclosed in its registration statement all material facts about its intended participation.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 00-19093 Filed 7-27-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43043; File No. SR-CBOE-00-25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Trade Standardized Equity Options on Trust Issued Receipts

July 17, 2000.

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 June 23, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.