

**SUPPLEMENTARY INFORMATION:** On October 23, 2000, the Pension Benefit Guaranty Corporation ("PBGC") published in the **Federal Register** (at 65 FR 63266) a notice of its request to the Office of Management and Budget ("OMB") for extension of approval, under the Paperwork Reduction Act, of the collection of information under the PBGC's regulation on Payment of Premiums (29 CFR Part 4007). On December 1, 2000, the PBGC published in the **Federal Register** (at 65 FR 75160) a final rule that affected the collection of information. In the same day's **Federal Register**, the PBGC published (at 65 FR 75319) a notice informing the public that the PBGC was supplementing its pending paperwork request by submitting to OMB for review and approval a revised collection of information, including revised premium forms and instructions reflecting amendments made by the final rule.

OMB has approved the PBGC's request, as so supplemented, for three years (until December 31, 2003). The control number assigned to this collection of information by OMB is 1212-0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Issued in Washington, DC, this 21st day of December, 2000.

**Stuart A. Sirkin,**

*Director, Corporate Policy and Research  
Department, Pension Benefit Guaranty  
Corporation.*

[FR Doc. 00-33311 Filed 12-28-00; 8:45 am]

**BILLING CODE 7708-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24795; 813-214]

### BCP III Affiliates Fund Limited Partnership and Baird Financial Corporation; Notice of Application

December 21, 2000.

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

**ACTION:** Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "ACT") exempting the applications from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (except for certain provisions of paragraphs (a), (b), (e), and (h)), and sections 36 through 53,

and the rules of regulations under the Act.

**Summary of Application:** Applicants request an order to exempt certain limited partnerships or other investment vehicles formed for the benefit of key employees of Baird Financial Corporation ("BFC") and its affiliates from certain provisions of the Act. Each partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

**Applicants:** BCP III Affiliates Fund Limited Partnership ("Initial Partnership") and BFC, on behalf of other partnerships or other investment vehicles that may be formed in the future (together, with the Initial Partnership, the "Partnerships").

**Filing Dates:** The application was filed on September 30, 1999, and amended on June 12, 2000 and December 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 January 16, 2001, 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 20549-0609. Applicants, 777 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202.

**FOR FURTHER INFORMATION CONTACT:** Paula L. Kashtan, Senior Counsel, at (202) 942-0615, 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 at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

### Applicants' Representations

1. BFC, a Wisconsin corporation, is a diversified financial services company which, directly or through its affiliates, engages in investment banking, securities and asset management. BFC

and its affiliates as defined in rule 12b-2 of the Securities Exchange Act of 1934 (the "Exchange Act") are referred to in this notice collectively as the "BFC Group" and individually as a "BFC entity."

2. Applicants propose to offer various investment programs for the benefit of certain key employees of BFC Group. The programs may be structured as different Partnerships or as separate plans within the same Partnership. Each Partnership will be a limited partnership, limited liability company, or other entity formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified management investment company. The Partnerships will be established primarily for the benefit of highly compensated employees of BFC Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership is voluntary.

3. Baird Capital Partners Management Company III, L.L.C., a Delaware limited liability company, will act as the general partner of the Initial Partnership (together with any affiliate that controls, is controlled by or is under common control with BFC and acts as a Partnership's general partner, the "General Partner"). The General Partner will be registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The General Partner will manage, operate and control each of the Partnerships. The General Partner will not charge the Initial Partnership a management fee, but it will receive a carried interest.<sup>1</sup> The General Partner may charge subsequent Partnerships a management fee and/or receive a carried interest.

4. Limited partner interests in the Partnerships ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 ("Securities Act"), or Regulation D under the Securities Act, and will be sold only to "Eligible Employees" and other "Qualified Participants," in each case as defined below (collectively, "Participants"). Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that such individual will be a sophisticated investor capable of understanding and evaluating the risks

<sup>1</sup> Any carried interest will be charged only to the extent permitted by section 205(a) of the Advisers Act and rule 205-3 under the Advisers Act.

of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is an individual who is a current or former employee, officer, or director of BFC Group and, except for a maximum of 35 individuals who meet the definition of Knowledgeable Employee in rule 3c-5(a)(4) under the Act with respect to a Partnership as if it were a Covered Company within the meaning of the rule or certain professionals who meet the sophistication and salary requirements described below ("BFC Investors"), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act. Eligible Employees will be experienced professionals in the investment banking, securities, and investment management businesses, or in related administrative, financial, accounting, legal, or operational activities.

5. Each BFC Investor, who also will qualify as an Eligible Employee, will: (a) Have a graduate degree in business, law or accounting; (b) have a minimum of five years of consulting, investment banking or similar business experience; and (c) have had reportable income from all sources (including all profit shares or bonuses) in the calendar year immediately preceding the individual's commitment in excess of \$120,000 and have a reasonable expectation of income from all sources of at least \$150,000 in each year in which the person invests in a Partnership. In addition, an Eligible Employee in this category will not be permitted to invest in any year more than 10% of his or her aggregate income from all sources for the immediately preceding year in the Partnership and in all other Partnerships in which he or she has previously invested.

6. A Qualified Participant: (a) Is an Eligible Family Member or Qualified Entity (in each case as defined below) of an Eligible Employee; and (b) if the individual or entity is purchasing an Interest from a Partner<sup>2</sup> or directly from the Partnership, comes within one of the categories of an "accredited investor" under rule 501(a) of Regulation D. An "Eligible Family Member" is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A "Qualified Entity" is: (a) A trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (b) a partnership, corporation, or other entity controlled by an Eligible Employee;<sup>3</sup> or (c) a trust or other entity

established solely for the benefit of eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year. In addition, each Participant will receive a copy of Schedule K-1 showing the Participant's share of income, credits, reductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner. No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or a BFC entity. No sales load will be charged in connection with the sale of Interests.

9. An Eligible Employee's Interest may be subject to repurchase upon termination of such employee from BFC Group. Upon repurchase, the General Partner will pay to the Eligible Employee at least the lesser of (a) the amount actually paid by the Eligible Employee to acquire the Interest (less prior distributions, plus interest and dividends), and (b) the fair market value of the Interest as determined at the time of termination by the General Partner. The terms of any repurchase provisions will apply equally to any Qualified Participant of an eligible employee.

10. Subject to the terms of the applicable limited partnership agreement, a Partnership will be permitted to enter into transactions involving: (a) A BFC entity; (b) a portfolio company; (c) any Partner or any person or entity affiliated with a Partner; (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with and over which a BFC entity will exercise investment discretion (a "Third Party Fund"); or (e) any partner or other investor of a Third Party Fund that is not affiliated with BFC Group (a "Third Party Investor"). These transaction may include a Partnership's purchase or sale of an investment or an interest from or to any

enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between BFC Group and these investment vehicles.

BFC entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Participants.

11. No Partnership will acquire any security issued by a registered investment company if, immediately after such acquisition, the Partnership would own more than 3% of the outstanding voting stock of the registered investment company.

12. A BFC entity (including the General Partner), acting as agent or broker, may receive placement fees, advisory fees, or other compensation from a Partnership in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are "usual and customary," subject to the requirements described below. A BFC entity, including the General Partner, also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities.

#### Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' security company, in relevant part, as any investment company all of whose securities are beneficially owned: (a) By current or former employees, or person on retainer, of one or more affiliated employers; (b) by immediate family members of such persons; or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act.

<sup>2</sup> "Partner" means any partner of a Partnership, including the General Partner.

<sup>3</sup> The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of "Qualified Entity" is intended to

Applicants request an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to: (a) Permit a BFC entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) permit any 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 BFC entity or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any BFC entity or Third Party Fund is or will become otherwise affiliated; and (c) permit any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with BFC Group. Applicants also state that, as professionals employed in the investment banking and financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and BFC Group will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d-1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, 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.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with BFC Group, or BFC Group's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of employee Participants as an incentive for them to remain with BFC Group and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with BFC Group are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that: (a) The resources of BFC Group enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate; (b) investments made by BFC Group will not be generally available to investors even of the financial status of the Eligible Employees; and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent. Applicants state that the concern that permitting co-investments by BFC Group and a Partnership might lead to less advantageous treatment of the Partnership will be mitigated by the fact that BFC Group will be acutely concerned with its relationship with the personnel who invest in such Partnership and the fact that senior officers and directors of BFC Group entities will be investing in such Partnership. Finally, applicants contend that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by

compliance with the lockstep procedures described in condition 3 below. Applicants believe that this condition will ensure that a Partnership will co-invest side-by-side and pro rata with, and on at least as favorable terms as, a BFC entity.

8. Co-investments with Third Party Funds, or by a BFC entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3. Applicants note that it is common for a Third Party Fund to require that BFC Group invest its own capital in Third Party Fund investments, and that the BFC Group investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to BFC Group. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by BFC Group in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships vis-a-vis a Third Party Fund.

9. Section 17(e) and rule 17e-1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a BFC entity (including the General Partner), that acts as an agent or broker, to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation is deemed "usual and customary." Applicants state that for the purposes of the application, fees or other compensation that is charged or received by a BFC entity will be deemed "usual and customary" only if: (a) The Partnership is purchasing or selling securities with other unaffiliated third parties, including a Third Party Fund; (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds; and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds.

Applicants assert that, because BFC Group does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees of other compensation paid by a Partnership to a BFC entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e-1(b) requires that a majority of directors of the General Partner who are not "interested persons" (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e-1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the managers of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the managers of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e-1. Applicants state that each Partnership will comply with rule 17e-1 by having a majority of the managers of the General Partner take actions and make approvals as are set forth in rule 17e-1. Applicants state that each Partnership will comply with all other requirements of rule 17e-1 for the transactions described above in the discussion of section 17(e).

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f-1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f-1 to permit a BFC entity to act as custodian of Partnership assets without a written contract, as would be required by rule 17f-1(a). Applicants also request an exemption from the rule 17f-1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest between BFC Group and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f-1.

12. Section 17(g) and rule 17g-1 generally require the bonding of officers and employees of a registered investment company who have access to

its securities or funds. Rule 17g-1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g-1 without the requested relief. Specifically, each Partnership will comply with rule 17g-1 by having a majority of the Partnership's directors take actions and make determinations as are set forth in rule 17g-1. Applicants also state that each Partnership will comply with all other requirements of rule 17g-1.

13. Section 17(j) and paragraph (b) of rule 17j-1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j-1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j-1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4 and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted,

these filings are unnecessary for the protection of investors and burdensome to those required to make them.

### Applicants' Conditions

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

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d-1 to which a Partnership is a party (the "Section 17 Transaction") 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 of such Partnership and do not involve overreaching of such Partnership or its Participants on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners of such Partnership, and the Partnership's organizational documents, and such Partnership's reports to its Partners. In addition, the General Partner of each Partnership will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.<sup>4</sup>

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

3. The General Partner of each Partnership will not invest the funds of such Partnership in any investment in which a "Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which such Partnership and the Co-Investor are participants, unless the Co-Investor, prior to disposing of all

<sup>4</sup> Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

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, on the same terms as, and pro rata with the Co-Investor. The term "Co-Investor" with respect to any Partnership means any person who is: (a) An "affiliated person" (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) BFC Group; (c) an officer or director of BFC Group; or (d) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, will not be deemed to limit or 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 is 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 or other investment vehicle established for any immediate family member; (c) when the investment comprises securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment comprises securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2-1 under the Exchange Act; (e) when the investment comprises government securities as defined in section 2(a)(16) of the Act or other money market instruments; or (f) when the investment comprises securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

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

these records will be subject to examination by the SEC and its Staff.<sup>5</sup>

5. The General Partner of each Partnership will send to each Participant in such Partnership who had an interest in any capital account of such 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 the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of such Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Participant of federal and state income tax returns.

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a BFC director, officer, or employee, such individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

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

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 00-33261 Filed 12-28-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24796; File No. 812-12282]

### First Defined Sector Fund, et al., Notice of Application

December 21, 2000.

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

**ACTION:** Notice of application for an order of exemption under Section 6(c) of the Investment Company Act of 1940 ("1940 Act") for exemptions from the provisions of Sections 9(a), 13(a), 15(a)

<sup>5</sup> Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

**Applicants:** First Defined Sector Fund and First Trust Advisors, L.P.

**Summary of Application:** Applicants seek an order to the extent necessary to permit shares of any existing or future portfolio of First Defined Sector Fund ("Trust") designed to fund insurance products and shares of any other investment company or series thereof now or in the future registered under the 1940 Act that is designed to fund insurance products and for which First Trust Advisors, L.P. ("First Trust"), or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor ("Future Trusts") (the Trust, together with Future Trusts are referred to, collectively, as the "Trusts"), to be sold to and held by (1) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context; (3) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act; and (4) First Trust or any of its affiliates.

**Filing Date:** The application was filed on October 2, 2000, and amended and restated on December 14, 2000.

**Hearing or Notification of Hearing:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 16, 2001, and 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 your interest, the reason for the request, and the issues you contest. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549-0609. Applicants, c/o Eric F. Fess, Esquire, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

**FOR FURTHER INFORMATION CONTACT:** Ronald A. Holinsky, Senior Counsel or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.