of ABN AMRO owns of record and beneficially and has the power to vote more than 5% of the outstanding voting securities of the Independence One Prime Money Market Fund. Applicants state that because affiliated persons of ABN AMRO, in a fiduciary capacity, own 5% or more (and in some cases more than 25%) of the outstanding voting securities of the Acquiring Funds, each may be deemed to be affiliated persons of the Acquiring Funds. In addition, applicants state that because affiliated persons of ABN AMRO also own 5% or more (and in some cases more than 25%) of the outstanding voting securities of the Acquired Funds, in a fiduciary or custodial capacity, or on behalf of brokerage customers, each also may be deemed to be an affiliated person of the Acquired Funds. As a result, the Acquiring Funds may be deemed to be affiliated persons of an affiliated person of the Acquired Funds.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that 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 the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to effect the Reorganization. Applicants submit that the Reorganization satisfies the conditions of section 17(b) of the Act. Applicants also state that the Boards, including all of the Independent Trustees, have determined that the participation of the Funds in the Reorganization is in the best interests of each Fund and that such participation will not dilute the interests of existing shareholders of each Fund. Applicants also state that the Reorganization will be effected on the basis of relative net asset value.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11615 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25568; 812–12802]

New York State College Choice Tuition Savings Program Trust Fund, et al.; Notice of Application

May 3, 2002.

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

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit New York State College Choice Tuition Savings Program Trust Fund (the ''Trust'') to purchase shares of certain series of TIAA–CREF Institutional Mutual Funds (''TIAA–CREF Funds'') in-kind.

APPLICANTS: The Trust and TIAA–CREF Funds.

FILING DATE: The application was filed on April 4, 2002.

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 May 28, 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 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, 730 Third Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, 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 SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust was created by legislation enacted by New York and serves as a vehicle in which participant contributions from a qualified tuition program created pursuant to New York law and section 529 of the Internal Revenue Code of 1986, as amended (''New York Program''), are deposited into New York State College Choice Tuition LLC (the ''LLC''). Applicants state that as a state instrumentality, the Trust is exempt from the Act pursuant to section 2(b). The LLC consists of age-based program series (''Program Series'') that invest in differing allocations in underlying portfolios of the LLC (the ''Underlying Portfolios''). Applicants state that the LLC and the Underlying Portfolios are exempt from the Act pursuant to sections 3(c)(1) and 3(c)(7). Teachers Insurance and Annuity Association of America (''TIAA'') serves as the program administrator for the New York Program.

2. TIAA–CREF Funds is an open-end management investment company registered under the Act. TIAA–CREF Funds is comprised of multiple series, three of which are the Institutional Growth Equity, Institutional Bond and Institutional Money Market Funds (the ''Affected Funds''). Advisors, an investment adviser registered under the Investment Advisers Act of 1940, and an indirect wholly owned subsidiary of TIAA, serves as investment adviser to the both the Affected Funds and the Underlying Portfolios.

3. Applicants state that subsequent to the establishment of the Trust, New York adopted legislation that would allow the New York Program greater flexibility in its investment options. Applicants propose to convert the New York Program to a simpler structure utilizing TIAA–CREF Funds, and forming new program series (''New Program Series'') at the Trust level rather than the LLC level (the ''Reorganization''). Applicants state that the Reorganization should result in greater flexibility and reduced costs for the New York Program as the New Program Series will invest directly in the Affected Funds. The Reorganization will involve the purchase by the New Program Series of shares of the Affected Funds in-kind with portfolio securities received by the New Program Series from the Underlying Portfolios (''the In-Kind Purchase''). The Underlying Portfolios subsequently will be liquidated. Applicants state that each Affected Fund has investment objectives and policies substantially identical to those of the corresponding Underlying Portfolio. Applicants further state that

the securities involved in the In-Kind Purchase will be valued in the same manner as they would be valued for purposes of computing the net asset values for the Affected Funds.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Applicants state that the Underlying Portfolios and the Affected Funds may be deemed to be affiliated persons under section 2(a)(3) because they may be deemed to be under the common control of Advisors. The Trust, by controlling the Underlying Portfolios by virtue of its ownership in the Program Series, would be an affiliated person of an affiliated person of TIAA–CREF Funds. In addition, applicants state that the Trust owns more than 5% of the outstanding voting securities of another series of TIAA–CREF Funds and therefore the Trust could be deemed to be an affiliated person of an affiliated person of the Affected Funds. Therefore, applicants state that the In-Kind Purchase may be prohibited by section 17(a).

3. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the terms of the In-Kind Purchase satisfy the standards set forth in section 17(b). Applicants state that TIAA–CREF Fund's board of trustees, including a majority of the trustees who are not interested persons as defined in section 2(a)(19) of the Act, determined that the In-Kind Purchase would be in the best interests of each Affected Fund and would not dilute existing shareholder interests. Applicants also state that the In-Kind Purchase will comply with rule 17a–7(b) through (g) under the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11616 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45868; File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03]

Self-Regulatory Organizations; The Depository Trust Company, The Options Clearing Corporation, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, Government Securities Clearing Corporation, and MBS Clearing Corporation; Order Granting Approval of Proposed Rule Changes Seeking Authority To Enter Into a Multilateral Cross-Guaranty Agreement

May 2, 2002.

I. Introduction

On December 14, 2000, February 20, 2001, June 26, 2001, June 27, 2001, September 21, 2001, and September 25, 2001, The Depository Trust Company (''DTC''), The Options Clearing Corporation (''OCC''), National Securities Clearing Corporation (''NSCC''), Emerging Markets Clearing Corporation (''EMCC''), Government Securities Clearing Corporation (''GSCC''), and MBS Clearing Corporation (''MBSCC'') (collectively referred to as the ''clearing agencies''), respectively, filed with the Securities and Exchange Commission (''Commission'') proposed rule changes (File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The purpose of the proposed rule change was to enable the clearing agencies to enter into a multilateral cross-guaranty agreement (''Multilateral Agreement''). Notice of the proposals was published in the **Federal Register** on March 14, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule changes.

II. Description

The clearing agencies have filed these proposed rule changes in order that they may enter into a multilateral cross-guaranty agreement that will replace the existing bilateral cross-guaranty agreements that are in place today.[3] In general, each clearing agency that is a party to a bilateral agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies. This means that if a common member fails and if one clearing agency winds up its business with the common member with assets of the common member in excess of the clearing member's liabilities to the clearing agency and the other clearing agency winds up its business with the common member with liabilities of the clearing member in excess of the clearing member's assets, (i) the clearing agency with the excess assets pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency and (ii) the amount paid by the clearing agency with the excess assets to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess assets which the clearing agency with the excess assets may satisfy if necessary (thereby reimbursing itself for the amount paid to

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

[2] Securities Exchange Act Release No. 45524, (March 8, 2002), 67 FR 11521.

[3] At the present time, there are bilateral cross-guaranty agreements in effect between:

(1) DTC and NSCC (forming part of the DTC–NSCC Agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC), Securities Exchange Act Release Nos. 36867 (February 21, 1996) [File No. SR–DTC–96–06] and 36866 (February 21, 1996) [File No. SR–NSCC–96–03];

(2) MBSCC and Participants Trust Company, Securities Exchange Act Release No. 38604 (May 9, 1997) [File No. SR–PTC–97–01] (Participants Trust Company has been merged into DTC, Securities Exchange Act Release No. 40357 (August 24, 1998) [File Nos. SR–DTC–98–12, SR–PTC–98–02]);

(3) NSCC and each of MBSCC, GSCC and International Securities Clearing Corporation (''ISCC''), (ISCC has ceased operations and is no longer a registered clearing agency), Securities Exchange Act Release Nos. 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03 and SR–ISCC–96–04] and 39020 (September 4, 1997) [File No. SR–NSCC–97–11];

(4) NSCC and OCC, Securities Exchange Act Release No. 39022 (September 4, 1997) [File Nos. SR–OCC–97–17 and SR–NSCC–97–12]; and

(5) EMCC and each of NSCC, GSCC, and ISCC, Securities Exchange Act Release Nos. 42180 (November 29, 1999) [File No. SR–EMCC–99–7] and 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04].