Extension: Rule 34b–1; File No. 270–305; OMB Control No. 3235–0346.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• *Rule 34b–1 (17 CFR 270.34b–1) under the Investment Company Act of 1940, Sales Literature Deemed to be Misleading.*

Rule 34b–1 under the Investment Company Act (17 CFR 270.34b–1) governs sales material that accompanies or follows the delivery of a statutory prospectus (''sales literature''). Rule 34b–1 deems to be materially misleading any investment company sales literature, required to be filed with the Commission by section 24(b) of the Investment Company Act (15 U.S.C. 80a–24(b)),[1] that includes performance data unless it also includes the appropriate uniformly computed data and the legend disclosure required in advertisements by rule 482 under the Securities Act of 1933 (17 CFR 230.482).

Requiring the inclusion of such standardized performance data in sales literature is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among fund performance claims.

The Commission estimates that respondents file approximately 37,000 responses with the Commission, which include the information required by rule 34b–1. The burden from rule 34b–1 requires slightly more than 2.4 hours per response resulting from creating the information required under rule 34b–1.[2] The total burden hours for rule 34b–1 is 89,143 per year in the aggregate (37,000 responses x 2.4092702 hours per response). Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under rule 34b–1 is mandatory. The information provided under rule 34b–1 is not kept confidential. The Commission 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: November 22, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30885 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

[1] Sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of section 24(b) of the Investment Company Act upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising. *See* rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3).

[2] The estimated burden per response is 2.9 hours for 686 responses and 2.4 hours for the remaining, giving a more exact weighted average burden per response of approximately 2.4092702.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25840; 812–12524]

Maxim Series Fund, Inc., *et al.*; Notice of Application

December 2, 2002.

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

ACTION: Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) 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: Applicants seek an order to permit certain registered investment companies to (a) pay an affiliated lending agent, and the lending agent to accept, fees based on a share of the revenues generated from securities lending transactions, and (b) lend portfolio securities to affiliated broker-dealers.

Applicants: Maxim Series Fund, Inc. (''Maxim''), Orchard Series Fund (''Orchard''), Barclays Global Investors Funds (''BGIF''), Master Investment Portfolio (''MIP''), iShares, Inc., and iShares Trust (collectively, the ''Trusts''), Barclays Global Fund Advisors (''BGFA''), and Barclays Global Investors, N.A. (''BGI'').

Filing Dates: The application was filed on May 23, 2001, and amended on August 12, 2002, and November 27, 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 December 26, 2002, and should be 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 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, Barclays Global Investors, N.A., 45 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, 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 is available for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Trusts are registered under the Act as open-end management investment companies and are either a Maryland corporation or a Delaware statutory trust. Each Trust consists of multiple series (the Trusts and their series, the ''Funds''). BGFA, an investment adviser registered under the

Investment Advisers Act of 1940, serves as investment adviser to the MIP, iShares, Inc., and iShares Trust Funds and as investment sub-adviser to the Maxim and Orchard Funds and is a wholly-owned subsidiary of BGI. BGI is a national banking association and acts as a securities lending agent on behalf of fiduciary accounts and collective trust funds.

2. Applicants request that the order also apply to any registered management investment company and series thereof that currently is or in the future may be advised or sub-advised by BGFA, or any successor in interest (included in the term ''Funds''),[1] and any other broker-dealers now or in the future controlling, controlled by, or under common control with BGI (''Affiliated Broker-Dealers''). All entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that relies on the order in the future will comply with the terms and conditions in the application.

3. Each Fund is, or will be, authorized to lend its portfolio securities. The Funds seek to participate from time to time as lenders in a securities lending program administered by BGI (the ''Program'').[2] Under the Program, BGI acts as securities lending agent for each of the Funds pursuant to a securities lending agency agreement (''Lending Agreement''). BGI will enter into securities loan agreements (''Loan Agreements'') on behalf of a Fund with registered broker-dealers, including Affiliated Broker-Dealers, that wish to borrow securities owned by the Fund (''Borrowers''). Applicants represent that the duties to be performed by BGI as lending agent will not exceed the parameters set forth in *Norwest Bank, N.A.* (pub. avail. May 25, 1995).

4. Pursuant to the Loan Agreements, BGI will deliver portfolio securities to the Borrowers, who have been approved by a Fund, in exchange for cash collateral or other types of collateral, such as U.S. government securities. Cash collateral will be delivered in connection with most loans. BGI will invest the cash collateral on behalf of the Fund in accordance with specific parameters established by the Fund. These guidelines include the permissible investment of the cash collateral, as well as a list of eligible types of investments.

5. With respect to loans that are collateralized by cash, the Borrower will be entitled to receive a fee based on the amount of cash collateral. The Fund is compensated on the spread between the net amount earned on the investment of cash collateral and the Borrower's fee. In the case of collateral other than cash, the Fund will receive a loan fee paid by the Borrower equal to a percentage of the market value of the loaned securities as specified in the Loan Agreement. BGI may invest the cash collateral in certain short-term instruments through one or more joint accounts which will operate in reliance on the no-action letter issued to *The Chase Manhattan Bank* (pub. avail. Jul. 24, 2001). BGI may also invest the cash collateral in money market funds, including those managed by BGFA, in reliance on an exemptive order.

6. Applicants request an order to permit (a) the Funds to pay BGI, and BGI as lending agent to accept, fees based on a share of the proceeds derived from the Program, and (b) the Funds to lend portfolio securities to Affiliated Broker-Dealers.

Applicants' Legal Analysis

A. Payment of Lending Agent Fees to BGI

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates unless the Commission has approved the transaction. Section 2(a)(3) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Because BGI is the parent company of BGFA, an investment adviser for each Fund, BGI is an affiliated person of an affiliated person (or second-tier affiliate) of the Funds. Applicants state that a fee arrangement between a lending agent and a lending registered investment company, under which compensation is based on a percentage of the revenue generated by the securities lending transactions, may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d–1. Accordingly, applicants request an order under section 17(d) of the Act and rule 17d–1 under the Act to permit each Fund to pay, and BGI to accept, fees that are based on a share of the proceeds derived by the lending Funds in connection with the Program.

2. In determining whether to approve a joint transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

3. Applicants propose that each Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with BGI, as lending agent, will meet the standards of rule 17d–1:

a. In connection with the approval of BGI as lending agent for a Fund and implementation of the proposed fee arrangement, a majority of the board of directors or trustees (the ''Board''), including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (the ''Disinterested Members''), of the Fund will determine that (i) the contract with BGI is in the best interest of the Fund and its shareholders; (ii) the services performed by BGI are required for the Fund; (iii) the nature and quality of the services provided by BGI are at least equal to those provided by others offering the same or similar services; and (iv) the fees for BGI's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

b. Each Fund's Lending Agreement with BGI will be reviewed at least annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Members) makes the findings referred to in paragraph (a) above.

c. In connection with the initial implementation of the proposed fee arrangement whereby BGI will be compensated as lending agent based on a percentage of the revenue generated by a Fund's participation in the Program, the Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

d. The Board, including a majority of the Disinterested Members, will (i) determine at each regular quarterly

[1] The term ''successor'' is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Applicants represent that BGI's personnel providing day-to-day lending agency services to the Funds will not provide investment advisory services to the Funds or participate in any way in the selection of portfolio securities for, or any other aspects of the management of, the funds.

meeting whether the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures for continuing appropriateness.

e. Each Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which it was determined that each loan was made in accordance with the procedures set forth above and the conditions to the application.

4. Applicants state that, under the terms of a Lending Agreement, BGI or an affiliate may indemnify a Fund against losses incurred by the Fund resulting from a default by one or more Borrowers that participate in the Program. Applicants request an order under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) and under section 17(d) of the Act and rule 17d–1 under the Act to permit the Funds to purchase the right to indemnification by BGI or an affiliate in instances of Borrower default, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) to permit a Fund to accept an indemnification payment from BGI or an affiliate in exchange for the Fund's right to proceed against the defaulting Borrower (''Indemnification'').

5. Sections 17(a)(1) and (2) of the Act make it unlawful for an affiliated person of a registered investment company or an affiliated person of that person, acting as principal, to knowingly sell or purchase any security or other property to or from the company. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the Commission has approved the transaction. Applicants state that Indemnification is an increasingly common term provided by non-affiliated securities lending agents to investment companies. Applicants state that Indemnification, if any, will be part of the Lending Agreement between BGI and a Fund and no separate fee will be charged for the Indemnification without obtaining further exemptive relief from the Commission. Applicants state that the Indemnification right will not be applied differently based on the identity of a Borrower. Furthermore, applicants state that a Fund's Board will be asked to review any Indemnification settlements made by the Fund at each quarterly Board meeting. A Fund will not accept any amount less than the full amount of the loss under an Indemnification settlement without obtaining an exemptive order from the Commission.

B. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company or an affiliated person of such person, acting as principal, to borrow money or other property from the registered investment company. Applicants state that because the Affiliated Broker-Dealers may be deemed to be controlled by or under common control with BGI and under common control with BGFA, the Affiliated Broker-Dealers may be deemed to be affiliated persons of BGI and/or BGFA, and also second-tier affiliated persons of the Funds. Accordingly, section 17(a)(3) would prohibit the Affiliated Broker-Dealers from borrowing portfolio securities from the Funds.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit the Funds to lend portfolio securities to Affiliated Broker-Dealers. Applicants state that the Funds seek to diversify the Borrowers to whom they lend in order to ensure the stability and efficiency of the Program. Applicants submit that because only a few Borrowers may seek to borrow a particular security at a given time, a prohibition on lending to Affiliated Broker-Dealers could disadvantage a Fund.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated Borrowers.[3] In this regard, applicants state that at least 50% of the loans made by the Funds, on an aggregate basis (by each ''group of investment companies,'' as defined in section 12(d)(1)(G) of the Act), will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board of each Fund, including a majority of the Disinterested Members. All transactions with the Affiliated Broker-Dealers will be reviewed periodically by an officer of the Funds. The Fund's Board, including a majority of the Disinterested Members, also will review quarterly reports on all lending activity.

Applicants' Conditions

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

A. Payment of Lending Agent Fees

1. The Program will comply with all present and future applicable guidelines of the Commission and staff regarding securities lending arrangements.

2. The approval of a Fund's Board, including a majority of Board members who are Disinterested Members, shall be required for the initial and subsequent approvals of BGI's service as lending agent for the Fund pursuant to the Program, and for any periodic review of loan transactions for which BGI acted as lending agent pursuant to the Program.

B. Lending to Affiliated Broker-Dealers

1. The Funds on an aggregate basis (by each ''group of investment companies,'' as defined in section 12(d)(1)(G) of the Act) will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

2. The total value of securities loaned to any one Borrower on the approved list will be in accordance with a schedule to be approved by the Fund's Board, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Fund, computed at market value.

3. A Fund will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction costs incurred in making such loan.

4. a. All loans will be made with spreads no lower than those set forth in a schedule of spreads which will be established and may be modified from

[3] A ''spread'' is the compensation earned by a Fund, as lender, from a securities loan. The compensation is in the form either of a lending fee payable by the Borrower to the Fund (where non-cash collateral is posted) or of the excess—retained by the Fund—over a rebate rate payable by the Fund to the Borrower (where cash collateral is posted and then invested by the Fund).

time to time by each Fund's Board and by a majority of the Disinterested Members (''Schedule of Spreads'').

b. The Schedule of Spreads will set forth rates of compensation to each Fund that are reasonable and fair and that are determined in light of those considerations set forth in the application.

c. The Schedule of Spreads will be uniformly applied to all Borrowers of a Fund's securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

d. If a security is loaned to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

e. The Program will be monitored on a daily basis by an officer of the Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to each Fund's Board, including a majority of the Disinterested Members.

5. Each Fund's Board, including a majority of the Disinterested Members, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of the requested order and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such procedures for their continuing appropriateness.

6. The Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the Borrower, the terms of the loan and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable and that the procedures followed in making such loan were in accordance with the other undertakings set forth in the application.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30913 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25839; 812–12874]

Stratigos Fund, L.L.C., et al.; Notice of Application

December 2, 2002.

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

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

Summary of Application: Applicants request an order to permit a limited liability company to transfer its assets to a registered closed-end investment company in exchange for interests in the closed-end investment company.

Applicants: Stratigos Fund, L.L.C. (''Stratigos''), Balius Fund, L.L.C. (''Balius'') and CIBC Oppenheimer Advisers, L.L.C. (''Adviser'').

Filing Dates: The application was filed on August 27, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 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 December 27, 2002, and should be 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 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o CIBC World Market Corp., 622 Third Avenue, 8th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Annette Capretta, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Stratigos, a Delaware limited liability company, is registered under the Act as a closed-end management investment company. Balius, a Delaware limited liability company, is not registered under the Act in reliance on section 3(c)(7) of the Act. Limited liability company interests (''Interests'') in Stratigos and Balius are not registered under the Securities Act of 1933, as amended (the ''1933 Act''), and are sold to investors (''Members'') in a private placement in reliance upon section 4(2) of the 1933 Act and Regulation D under the 1933 Act.

2. The Adviser, a Delaware corporation, serves as (a) Stratigos' investment adviser and (b) the managing member of Balius and, in that capacity, has overall responsibility for the management, operation and administration of Balius, including Balius' investment activities. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. As of July 31, 2002, the Adviser owned an Interest in Stratigos with a net asset value of $52,452.31 (which represented 0.74% of the value of the outstanding Interests in Stratigos as of such date). As of July 31, 2002, Canadian Imperial Holdings, Inc. (''CIHI''), an affiliated person of the Adviser, owned an Interest in Balius with a net asset value of $67,459.64 (which represented 0.81% of the value of the outstanding Interests in Balius as of such date).

3. Applicants propose that, pursuant to an agreement and plan of acquisition (''Acquisition Agreement''), Balius will transfer to Stratigos substantially all of its assets, which will consist of cash and the portfolio securities of Balius that (a) are permissible investments under the investment policies and restrictions of Stratigos, as set forth in its offering memorandum (''Offering Memorandum'') and its limited liability company agreement (''Company Agreement''), and (b) have readily available market quotations (the ''Assets''), in exchange for Interests of Stratigos (the ''Exchange''). All of