

device instead of a generally licensed device. The use of the CoreReader would be one element in the implementation of the Strategic Highway Research Program (SHRP), established by Congress in 1987 to develop and evaluate innovative technologies for roadway construction, maintenance, and operations. The SHRP program produced Superpave, a more reliable asphalt-mix design, analysis, and quality control methodology that utilizes an advanced technology approach to pavement design.

Implementation of the Superpave-mix design has resulted in superior performing asphalt pavements. However, the coarser mixtures resulting from Superpave-mix designs have caused problems with the accuracy and precision to measure the specific gravity of laboratory specimens and pavement core samples. The overestimation of density results in premature pavement distress and permeability related problems. Troxler's CoreReader is a technology improvement that overcomes the shortcomings of current water displacement methods for measuring the specific gravity of asphalt samples. Unlike current methods, the CoreReader uses radiation from a distribution of sources to probe the entire volume of an asphalt sample. By doing so, it can accurately measure the coarser Superpave-mixes. The CoreReader reduces operator dependence, improves accuracy and precision, and reduces laboratory differences in measurements to produce better pavement designs.

Troxler's experience with the distribution of generally licensed gauges shows that despite the CoreReader's advantages, it would be attractive to end-users only if it could be distributed nationally under uniform licensing with low quantities of radioactive material contained in it. Many potential users have indicated that they are unwilling to deal with additional regulatory burdens associated with generally licensed devices. Therefore, Troxler has asserted in its request that the CoreReader's benefits can be fully realized only if it is licensed for exempt distribution.

#### *Summary of the Environmental Assessment*

The NRC staff performed an appraisal of the environmental impacts associated with the exemption, in accordance with 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions. The exemption would authorize Troxler to manufacture and

distribute the CoreReader as an exempt product.

The results of the staff's assessment of potential environmental impacts are documented in an EA which, as noted above, has been placed in the Publicly Available Records component of NRC's document system (ADAMS). Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

#### *Alternatives to the Proposed Action*

The proposed action that the NRC is considering is to issue an exemption from 10 CFR 32.14. The proposed action allows Troxler to distribute the CoreReader density gauge as an exempt device. The alternatives available to the NRC are:

1. Approve the exemption request as submitted; or
2. Deny the request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant denial of the exemption request. The staff considers that Alternative 1 is the appropriate alternative for selection.

#### *Conclusion*

The NRC staff considered the risk to human health from distribution and transportation, routine use, disposal, and accidents and misuse, as well as the environmental consequences of approving an exemption from 10 CFR 32.14 for the Troxler CoreReader, and has determined that the approval of this exemption is (1) authorized by law; (2) will not endanger life or property or the common defense and security; and (3) is otherwise in the public interest.

#### **III. Finding of No Significant Impact**

The NRC staff has prepared an EA for the proposed exemption from 10 CFR 32.14. On the basis of the assessment, the NRC staff has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, a Finding of No Significant Impact is appropriate.

#### **IV. Further Information**

The EA and the documents related to this proposed action are available for public inspection at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. The accession number of the electronic file for the related documents is ML023190183; the direct accession number of the EA within this file is ML023450624. Documents may also be

examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20854. Any questions regarding this action can be directed to Dr. John P. Jankovich at (301) 415-7904 or by e-mail at [JPJ2@nrc.gov](mailto:JPJ2@nrc.gov).

Dated in Rockville, Maryland, this 13th day of December, 2002.

For the Nuclear Regulatory Commission.

**Thomas H. Essig,**

*Chief, Materials Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02-31944 Filed 12-18-02; 8:45 am]

**BILLING CODE 7590-01-P**

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 25847; 812-12678]**

### **Cohen & Steers Advantage Income Realty Fund, Inc., et al.; Notice of Application**

December 12, 2002.

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

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

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#### **SUMMARY OF THE APPLICATION:**

Applicants request an order to permit certain registered closed-end management investment companies to make long-term capital gains distributions to holders of shares of their preferred stock.

**APPLICANTS:** Cohen & Steers Advantage Income Realty Fund, Inc. ("RLF"), Cohen & Steers Quality Income Realty Fund, Inc. ("RQI"), Cohen & Steers Premium Income Realty Fund, Inc. ("RPF"; each of RPF, RQI and RLF, an "Existing Fund" and collectively, the "Existing Funds"), Cohen & Steers Capital Management, Inc. (including any successor in interest<sup>1</sup>, the "Adviser") and each registered closed-end management investment company to be advised in the future by the Adviser or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser (such

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<sup>1</sup> A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

investment companies, the "Future Funds" and together with the Existing Funds, the "Funds").<sup>2</sup>

**FILING DATES:** The application was filed on October 31, 2001 and amended on December 11, 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 the 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 January 6, 2003 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 Laurence B. Stoller, 757 Third Avenue, New York, New York 10017.

**FOR FURTHER INFORMATION CONTACT:**

Laura J. Riegel, at (202) 942-0567, or Todd F. Kuehl, 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 from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

**Applicants' Representations**

1. The Existing Funds are organized as Maryland corporations and registered under the Act as non-diversified, closed-end management investment companies. The primary objective of each Existing Fund is high current income through investment in real estate securities. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, serves as the investment adviser to the Existing Funds.

2. Each Fund has or will have two classes of stock: a single class of common stock and a single class of auction rate cumulative preferred stock issued in one or more series. The common stock of each Existing Fund is listed and traded on the New York Stock Exchange. Shares of preferred stock of each Fund are, or will be, subject to purchase and sale at auctions that are generally held at seven or twenty-eight day intervals or at such other interval as specified in the articles supplementary or other corporate organizational documents creating such auction rate preferred stock (each of the foregoing, an "Auction Interval").

3. Each Fund has paid or will pay dividends on its preferred stock at an Auction Interval. The Board of Directors of each Fund (each, a "Board") has set or will set the initial dividend rate on each series of the Fund's preferred stock as a specified percentage of the liquidation preference of the series of the preferred stock.<sup>3</sup> Thereafter, each Fund pays or will pay an amount of dividend based on rates determined by auction or, under certain circumstances, by a predetermined formula. All investment income remaining after the payment of each Fund's preferred stock dividends and expenses will be paid monthly to holders of common stock at a specified amount.

4. Each Fund also will make annual distributions of realized long-term capital gains, if any, to both holders of common and preferred stock. Distributions of long-term capital gains are designed to comply with IRS Revenue Ruling 89-81, 1989-1 C.B. 226 ("Revenue Ruling 89-81"). Depending upon the amount of long-term capital gains realized in a fiscal year, the period of time between auctions, and the amount of the dividend as set by auction, each Fund may be required to distribute a greater number of long-term capital gains distributions to its preferred stockholders than is permitted by section 19(b) of the Act and rule 19b-1 under the Act to comply with Revenue Ruling 89-81. Holders of common stock in each Fund will receive long-term capital gains distributions in compliance with section 19(b) and rule 19b-1.

5. Applicants request relief to permit each Fund to make long-term capital gains distributions to its preferred stockholders in any one taxable year to the extent necessary to comply with Revenue Ruling 89-81, provided that,

the Fund maintains in effect a distribution policy calling for distributions to its preferred stockholders at each Auction Interval at rates determined by the Board of the Fund at the time a series of such preferred stock is initially issued, and thereafter pursuant to auction, or under certain circumstances, by a predetermined formula.

**Applicants' Legal Analysis**

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b-1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(c) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b-1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b-1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Revenue Ruling 89-81 requires that a regulated investment company that has two or more classes of stock make designations of various types of income in the same proportion as the total dividends distributed to each class for the taxable year. To satisfy the proportionate designation requirements of Revenue Ruling 89-81, whenever a Fund has realized a long-term capital gain with respect to a given tax year, the Fund designates the required proportionate share of such capital gain to be included in common and preferred stock dividends. The Fund calculates the ratio by dividing the total dividends paid to preferred stockholders during a taxable year by the total dividends paid to all classes during that year. The Fund then declares and distributes designated long-term capital gains dividends to the common and preferred stockholders in proportion to this ratio.

3. Applicants state that under certain circumstances, a Fund will be able to comply with both Revenue Ruling 89-81 and rule 19b-1. For example, if the entire dividend payment set at auction distributes in a single dividend the full amount of long-term capital gains required to be distributed by Revenue Ruling 89-81, the Fund will comply with both Revenue Ruling 89-81 and rule 19b-1. Applicants assert, however, that circumstances may arise when a

<sup>2</sup> All existing registered closed-end management investment companies that currently intend to rely on the requested order are named as applicants and any Future Fund that may rely on the order in the future will comply with the terms of the application.

<sup>3</sup> The respective Board of each of RLF, RQI and RPF set the initial dividend rate on each series of the respective Fund's preferred stock on July 20, 2001, April 1, 2002 and October 10, 2002.

Fund must make additional long-term capital gains distributions to comply with Revenue Ruling 89-81 that conflict with rule 19b-1. Applicants note that while rule 19b-1 does give a Fund some flexibility with respect to capital gains distributions, a Fund could have used all of the exceptions provided by rule 19b-1 and, in need of making further distributions to its preferred stockholders, be unable to comply with Revenue Ruling 89-81, section 19(b) and rule 19b-1.

4. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of rule 19b-1 was that investors might be unable to distinguish between regular distributions of capital gains and distributions of investment income. In the case of preferred stock, applicants state there is little chance for investor confusion since all an investor expects to receive is the cash amount representing the specified dividend distribution for any particular dividend period and no more. Applicants state that in accordance with rule 19a-1 under the Act, a separate statement showing the net investment income component of the distribution will accompany each Fund's preferred stock dividend, with a statement being provided near the end of the last dividend period in a year indicating the source or sources of each distribution (*i.e.*, net investment income (including short-term capital gains), net long-term capital gains and/or returns of capital) that was made on preferred stock during the year. Applicants also state that in each Fund's annual reports and other communications with stockholders, the Fund will regularly inform its stockholders that the Fund's dividends and distributions may not be tied to its investment income and capital gains and could represent a return of the Fund's capital, and that any return of the Fund's capital would not represent yield or investment on the Fund's investment portfolio. In addition, applicants state that, for its preferred stock, each Fund will include the amount and sources of distributions received during the year on the Fund's IRS Form 1099-DIV report of distributions and send that report to each stockholder who received distributions during the year (including stockholders who sold shares during the year). Applicants state that this information on an aggregate basis also will be included in each Fund's annual report to stockholders.

5. Another concern underlying section 19(b) and rule 19b-1 is that frequent long-term capital gains distributions could facilitate improper

distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend ("selling the dividend") where the dividend results in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as the Funds, which do not continuously distribute their shares. Applicants also state that the "selling the dividend" concern is not applicable to preferred stock, which entitles a holder to a specified periodic dividend and no more, and like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment.

6. Applicants state that another concern leading to the adoption of section 19 and rule 19b-1, increase in administrative costs, is not present because the Funds will make periodic distributions with respect to their preferred stock regardless of what portion is composed of long-term capital gains.

7. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such 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. For the reasons stated above, applicants believe that the requested exemption meets the standards set forth in section 6(c).

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-31932 Filed 12-18-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25846; 812-12870]

### The Hartford Series Fund Inc.; Notice of Application

December 12, 2002.

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

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the

"Act") for an exemption from section 15(f)(1)(A) of the Act.

#### SUMMARY OF THE APPLICATION:

Applicants request an order to permit a registered open-end investment company advised by HL Investment Advisors, LLC (the "Adviser") not to reconstitute its board of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act, following the acquisition of the assets of certain other registered open-end investment companies.

**APPLICANTS:** The Hartford Series Fund, Inc. ("Hartford Series Fund"), and the Adviser.

**FILING DATES:** The application was filed on August 21, 2002, and amended on December 9, 2002.

**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 January 6, 2003, 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 Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609; Applicants, 55 Farmington Ave, Hartford, CT 06105.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942-0574 or Janet M. Grossnickle, 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. The Hartford Series Fund is an open-end management investment company registered under the Act and is a Maryland corporation, consisting of 26 series. The Adviser, an indirect subsidiary of the Hartford Life and