

2(a)(9) with TCB that serves as investment adviser to any of the Portfolios (the "Advisers").

RELEVANT ACT SECTION: Order requested under section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants request a conditional order permitting the Portfolios to pool uninvested cash balances and deposit the balances into one or more joint accounts (the "Accounts"). Cash balances in the Accounts would be invested in short-term repurchase agreements.

FILING DATES: The application was filed on May 25, 1994, and amended on September 19, 1994, and December 23, 1994.

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 30, 1995, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicants, 712 Main Street, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Bradley W. Paulson, Staff Attorney, at (202) 942-0147 or C. David Messman, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered open-end management investment company and is organized as a business trust under the laws of Texas. TCB provides or arranges for investment advisory, administrative, custodial, and accounting services for all fifteen series of the Trust.

2. Each Portfolio may be expected to have uninvested cash balances held by its custodian or sub-custodian bank (the "Custodian") at the end of the trading

day. To provide liquidity and earn additional income, the Adviser ordinarily would invest this cash in short-term investments authorized under the Portfolio's investment policies.

3. Applicants propose to establish one or more Accounts that would be used exclusively to pool excess cash of the Portfolios to purchase one or more repurchase agreements. Under the proposed arrangement, the Adviser would enter into repurchase agreements by calling a previously approved counterparty, indicating the size and duration of the transaction, and negotiating the rate of interest. Master repurchase agreements establish minimum collateral levels, securities eligible to be held as collateral, and the maximum term of a transaction. The Custodian would be able to enter into third-party arrangements with qualified banks for custody of assets and collateral securities to facilitate repurchase transactions and obtain more attractive rates.

4. After the Adviser and a counterparty reach agreement on the size of a repurchase transaction, the Custodian would be notified and would be required to verify, before releasing the funds, that eligible collateral securities of sufficient value have been received. These securities would be either wired to the account of the Custodian (or a third-party custodian) at the appropriate Federal Reserve Bank or physically transferred to a segregated account of the Custodian (or third-party custodian).

5. Transactions in the Account would be reported to the Portfolios' Custodian through a trade authorization that would authorize the Custodian to settle the transaction on a joint basis. The trade authorization would state each Portfolio's portion of the investment. The Custodian would reconcile the Account with the trade authorizations on a daily basis. At least monthly, assets held in the Account would be reconciled with the Custodian's securities movement and control records, and the Custodian would reconcile each Portfolio's securities movement and control records with each Portfolio's security ownership records.

6. The Portfolios will not enter into repurchase agreements with their custodian, except where cash is received very late in the business day and otherwise would be unavailable for investment at all.

7. Applicants believe the proposed Account would have the following benefits for the Portfolios: (a) The Portfolios would save significant fees

and expenses by reducing the number of transactions in which they engage; (b) the Portfolios would enjoy a higher rate of return on uninvested cash balances because higher rates of return are usually available for larger repurchase agreements; (c) the number of trade tickets written by each party to a repurchase transaction would be reduced, which would simplify the transaction and decrease the opportunity for errors.

Applicants' Legal Analysis

1. Section 17(d) of the Act makes it unlawful for an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, to effect any transaction in which the registered investment company is a joint or a joint and several participant with such person in contravention of rules and regulations prescribed by the SEC. Rule 17d-1(a) under the Act provides that an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the SEC has issued an order approving the arrangement.

2. Each Portfolio, by participating in the proposed Account, and the Adviser by managing the proposed Account, could be deemed to be joint participants in a transaction within the meaning of section 17(d), and the proposed Account could be deemed to constitute a joint enterprise or other type of joint arrangement within the meaning of rule 17d-1. Furthermore, under the definition of "affiliated person" set forth in section 2(a)(3) of the Act, each applicant could be deemed an affiliated person of each other applicant.

3. Applicants believe that the proposed method of operating the Account would not result in conflicts of interest among any of the Portfolios or between a Portfolio and its Adviser. Although the Adviser would gain some benefit through administrative convenience and possible reduction in clerical costs, the primary beneficiaries would be the Portfolios and their shareholders. The Account would provide the Portfolios and their shareholders with a more efficient and productive way of administering daily investment transactions.

4. Applicants believe that it would be desirable to permit future Portfolios to participate in the Account without the necessity of applying for an amendment to the requested order. Future Portfolios would be required to participate on the