

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Investment Company Act Release No. 20882; 812-9356]

**Nicholas-Applegate Mutual Funds, et al.; Notice of Application**

February 6, 1995.

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

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Nicholas-Applegate Mutual Funds (the "Trust"), Nicholas-Applegate Capital Management (the "Adviser"), and Nicholas-Applegate Securities (the "Distributor").

**RELEVANT ACT SECTIONS:** Order requested to amend a prior order under section 6(c) that granted an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c-1.

**SUMMARY OF APPLICATION:** Applicants seek to amend an order permitting them to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares of certain series of the Trust. The amended order would permit applicants to impose a CDSC on redemptions of shares of certain other series of the Trust not covered by the previous order.

**FILING DATES:** The application was filed on December 9, 1994, and amended on February 3, 1995.

**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 March 6, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 600 West Broadway, 30th Floor, San Diego, California 92101.

**FOR FURTHER INFORMATION CONTACT:** James J. Dwyer, Staff Attorney, at (202) 942-0581, or C. David Messman, Branch

Chief, 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.

**Applicants' Representations**

1. The Trust and Nicholas-Applegate Investment Trust (the "Master Trust") are open-end management investment companies organized as Delaware business trusts. Under a "master-feeder" structure, each of the Trust's portfolios invests all of its assets in a corresponding series of the Master Trust. The Adviser is a registered investment adviser that serves as investment adviser to the Master Trust. The Distributor serves as principal underwriter of the shares of the portfolios of the Trust.

2. On March 30, 1993, the SEC issued an order (the "Existing Order")<sup>1</sup> permitting certain existing portfolios of the Trust (the "Portfolios") to impose a CDSC on certain redemptions and waive the CDSC under certain circumstances. The application for the Existing Order sought, and accordingly the Existing Order granted, relief on behalf of the Trust only with respect to the Trust's Portfolio A Series, Portfolio B Series, and Money Market Portfolio. The Existing Order also applied to all other open-end management investment companies or series thereof that invest substantially all of their assets in a registered investment company for which the Adviser serves in the future as investment adviser and that are in the same "group of investment companies" as the Portfolios, as defined in rule 11a-3 under the Act, the shares of which will be distributed on substantially the same basis as those of the Portfolios.

3. Applicants seek to amend the Existing Order to permit other portfolios of the Trust (the "Portfolio C Series") to impose a CDSC. Shares of the Portfolio C Series would be offered at net asset value without a front-end sales load. The shares would be offered under a distribution plan and shareholder service plan, each adopted pursuant to rule 12b-1 under the Act. Under the distribution plan, each Portfolio C Series may pay the Distributor an amount equal to .75% of the average daily net assets of the series to compensate the Distributor for selling the shares of the series. Under the shareholder service plan, each series

pays the Distributor an annual fee of up to .25% of the series' average daily net assets as reimbursement for certain expenses incurred in connection with shareholder services provided by the Distributor.

4. If the shares of a Portfolio C CDSC are redeemed within specified periods after their purchase date, the redemption proceeds will be reduced by a percentage of the lesser of the value of the shares redeemed or the total cost of such shares. The percentage will vary depending on the period the shares were held, as set forth in the applicable prospectus. The Distributor will retain the CDSC as compensation for dealer commissions paid with respect to sales of shares of the series and to recover a portion of the sales and marketing expenses incurred in marketing such shares. Applicants may in the future reduce the CDSC percentage, shorten the applicable holding period, or temporarily or permanently discontinue the CDSC.

5. No CDSC will be imposed on exchanges of shares of a Portfolio C Series for shares of other Portfolio C Series or for shares of the Trust's Money Market Portfolio Series. No CDSC will be imposed on the amount which represents a capital appreciation of shares, reinvestment of dividends, or capital gains distributions. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares not subject to the CDSC, including shares derived from reinvestment of dividends or capital gains distributions, and then of other shares in the order of purchase.

6. Applicants request relief to permit each investment company or series thereof that would assess a CDSC under the requested order to waive or reduce the CDSC in certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d-1. In addition, applicants will comply with rule 11a-3 with respect to any exchanges of shares.

7. The Distributor will refund out of its own assets any CDSC paid in connection with a redemption of shares of a Portfolio C Series upon reinvestment in a Portfolio C Series within 90 days of such redemption.

**Applicants' Legal Analysis**

Section 6(c) provides that the SEC may exempt any transactions from any transactions from any provision of the Act 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 set forth in the

<sup>1</sup> Investment Company Act Release Nos. 19315 (March 5, 1993) (Notice) and 19367 (March 30, 1993) (order).