approval of the relevant New Agreement(s) by the shareholders of the relevant Portfolio; or (b) to the appropriate Portfolio if the Interim Period has ended and its relevant New Agreement(s) have not received the requisite shareholder approval. Before any such release is made, the Independent Trustees of the Trust will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its ''assignment.'' Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, following the completion of the Transaction, control of the Adviser will transfer to First American. Applicants believe, therefore, that the Transaction will result in an assignment of the Existing Management Agreement and could be deemed to result in an assignment of the Existing Sub-Advisory Agreements and that the Existing Agreements will terminate according to their terms.

3. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by an assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser ''directly or indirectly receives money or other benefit'' in connection with the assignment. Applicants state that because of the benefits to DGC, the Adviser's parent, arising from the Transaction, applicants can not rely on rule 15a–4.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that 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. Applicants believe that the requested relief meets this standard.

5. Applicants note that the timing of the Transaction was determined by DGC and First American and arose primarily out of business considerations unrelated to the Trust. Applicants believe that allowing the Adviser and Subadvisers to continue to provide investment advisory services to the Portfolios during the Interim Period, thereby avoiding any interruption in services to the Portfolios, is in the best interests of the Portfolios and their shareholders and is in keeping with the spirit of the provisions of rule 15a–4 and with the purposes of section 15 of the Act.

6. Applicants submit that the scope and quality of services provided to each Portfolio during the Interim Period will not be diminished. During the Interim Period, each Portfolio would operate under the New Management Agreement and, if applicable, a New Sub-Advisory Agreement each of which is anticipated to be identical in substance to the relevant Existing Agreement, except for its effective date and escrow provisions. Applicants submit that they are not aware of any material changes in the personnel who will provide investment management services during the Interim Period. Accordingly, each Portfolio should receive, during the Interim Period, the same investment advisory services, provided in the same manner, at the same fee levels, and by substantially the same personnel as before the closing of the Transaction.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Management Agreement and New Sub-Advisory Agreements will have substantially the same terms and conditions as the Existing Management Agreement and Existing Sub-Advisory Agreements, except for their effective dates and escrow provisions.

2. Fees earned by the Adviser and Subadvisers in respect of the New Management Agreement and New Sub-Advisory Agreements during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid (a) to the Adviser and Subadvisers in accordance with the New Management Agreement and New Sub-Advisory Agreements, only after the requisite shareholder approvals are obtained, or (b) to the respective Portfolio, in the absence of such approvals with respect to such Portfolio.

3. The Trust will hold meetings of shareholders to vote on approval of the New Management Agreement and New Sub-Advisory Agreements on or before the 120th day following the termination of the Existing Management Agreement and Existing Sub-Advisory Agreements (but in no event later than September 30, 1998).

4. Either the Adviser or the Subadvisers will bear the costs of preparing and filing the application, and costs relating to the solicitation of shareholder approval of the Portfolios necessitated by the Transaction.

5. The Adviser and Subadvisers will take all appropriate steps so that the scope and quality of advisory and other services provided to the Portfolios during the Interim Period will be at least equivalent, in the judgment of the Board, including a majority of the independent Trustees, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, the Adviser and Subadviser will apprise and consult with the Board to assure that the Trustees, including a majority of the Independent Trustees of the Trust, are satisfied that the services provided will not be diminished in scope or quality.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10028 Filed 4–14–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23106; 812–10780]

Reich & Tang Distributors, Inc., et al.; Application

April 8, 1998.

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

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

SUMMARY OF APPLICATION: Applicants Reich & Tang Distributors, Inc. (the ''Sponsor'') and Equity Series Trust, Asset Allocation Trust (Series 1 and Subsequent Series) (the ''Trust'') request an order: (a) Under section 12(d)(1)(J) of the Act that would permit each series of

the Trust (''Trust Series'') to offer its shares to the public with a sales load that exceeds the 1.5% limit of section 12(d)(1)(F)(ii); (b) under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act to permit the Trust to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act; and (c) under section 6(c) of the Act for an exemption from sections 14(a) and 19(b) of the Act and rule 19b–1 under the Act to permit units of the Trust to be publicly offered without requiring the sponsor to take for its own account or place with others $100,000 worth of units in the Trust, and permit the Trust to distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

FILING DATES: The application was filed on September 15, 1997 and amended on December 31, 1997. Applicants have agreed to file another amendment during the notice period, the substance of which is included in this notice.

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 4, 1998 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. Applicants: c/o Peter J. DeMarco, Sponsor, 600 Fifth Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Nadya B. Roytblat, Assistant Director, 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 SEC's Public Reference Branch (tel. 202–942–8090).

Applicants' Representations

1. Each Trust Series will be a separate unit investment trust registered under the Act and organized under a trust indenture that will incorporate by reference a master trust agreement between the Sponsor and a qualified bank as trustee (the ''Trustee''). Pursuant to the trust agreement, the Sponsor will deposit into each Trust Series shares of a number of existing registered investment companies (''Funds''), or contracts and monies for the purchase of shares of such Funds. The portfolio of each Trust Series will consist exclusively of shares of Funds. Units of undivided interest in each Trust Series will be offered to investors typically in approximately $1, $10, or $1,000 increments (''Units''). The Sponsor will serve as the sponsor and depositor for each Trust Series, and will perform functions typical of unit investment trust sponsors.

2. The purpose of each Trust Series is to provide retail investors: (a) An investment with a professionally selected asset allocation model based upon the Sponsor's assessment of the overall economic climate and financial markets, and (b) the opportunity for capital appreciation through a diversified fixed portfolio of Funds professionally selected by the Sponsor from the available Funds within the various market sectors of the Sponsor's asset allocation model. Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Sponsor or one of its affiliates (''Affiliated Funds''). However, applicants anticipate that most of the Funds selected will be unaffiliated with the Sponsor (''Unaffiliated Funds''). Applicants state that the Trust's investments in Affiliated Funds and Unaffiliated Funds will comply with section 12(d)(1)(F) of the Act in all respects except for the sales load restriction in section 12(d)(1)(F)ii).

3. The only Funds that will be eligible for inclusion in a Trust Series are either no load Funds or Funds which, although they offer shares with a front-end sales charge, agree to waive any otherwise applicable sales load with respect to all shares sold or deposited in any Trust Series. Shares of each of the Funds (except for closed-end Funds) will, therefore, be sold for deposit into any Trust Series at net asset value. Shares of closed-end Funds will be purchased by a Trust Series at market prices. Investors in the Trust (''Unitholders'') will pay a specified sales load to the Sponsor in connection with the purchase of their Units. Sales loads imposed on Units are expected to range from 2.00% to 5.25% of the public offering price of the Units, with the actual amount dependent upon the number of Units purchased and the specified term of the Trust Series.

4. No evaluation fee will be charged with respect to determining the value of the Fund's shares that comprise the Trust's portfolio because shares of the Funds have their net asset values calculated daily, and these will be readily available to the Sponsor. The Trustee will receive service fees under a rule 12b–1 plan from the Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by a Trust Series. The Trustee will reduce its regular fee to the Trust directly by the fees it receives from the Funds and rebate any excess fees it receives to the Trust. Any fees so rebated will be utilized by the Trust to absorb other bona fide Trust expenses. To the extent that these fees exceed the total Trust expenses, the excess will be distributed along with other income earned by the Trust.

Applicants' Legal Analysis

Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to securities purchased or otherwise acquired by a registered investment company is immediately after the purchase or acquisition not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company and its affiliated persons and the acquiring company does not impose a sales load on its shares of more than 1.5%. In addition, no acquired company may be obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

3. The Trust Series will invest in Affiliated and Unaffiliated Funds in reliance on section 12(d)(1)(F) of the Act. If the requested relief is granted, the Trust Series will offer Units to the

public with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii).

4. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors.

5. Applicants state that investors in the Trust and subsequent series will pay a specified sales load, expected to range from 2.00% to 5.25% of the public offering price of the Units, to the Sponsor in connection with the purchase of their Units. Applicants have agreed, as a condition to the relief, that any sales charges, distribution-related fees, and service fees relating to Units, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Trust relating to its acquisition, holding, or disposition of shares of the Funds, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules. Applicants believe that it is appropriate to apply the NASD's Rule to the proposed arrangement in place of the sales load limitation in section 12(d)(1)(F) because the proposed limit would cap the aggregate sales charges of the Units and the underlying Funds, and because the proposed limit is consistent with the limit recently adopted in section 12(d)(1)(G) of the Act. Applicants assert that the NASD's specific sales charge rules more accurately reflect today's regulatory environment with respect to the methods by which investment companies finance sales expenses. Applicants contend that section 12(d)(1)(F), on the other hand, was adopted more than a quarter of a century ago and does not reflect the changes in the pricing practices of the industry.

6. Applicants state that, with respect to shares of closed-end Funds held by a Trust Series, no front-end sales loads, contingent deferred sales charges, rule 12b–1 fees, or other distribution fees or redemption fees will be charged in connection with the purchase or sale of these Funds by a Trust Series. Applicants state that, although the Trust Series likely will incur brokerage commissions in connection with its market purchases of shares of closed-end Funds, these commissions will not differ materially from commissions otherwise incurred in connection with the purchase or sale of comparable portfolio securities.

7. Applicants also agree as a condition to the requested relief that no Trust Series will invest in any underlying Fund that acquires securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

Section 17(a) of the Act

1. With regard to Trust Series' investments in Affiliated Funds, applicants request relief from section 17(a) of the Act under sections 6(c) and 17(b). Section 17(a) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling securities to, or purchasing securities from, the company.

2. Section 6(c) of the Act provides that the SEC may exempt persons or 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. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants state that shares of Affiliated Funds will be sold to the Trust at net asset value, or, in the case of closed-end Funds, at market prices. As a result, applicants believe that the proposed terms and conditions of the Trust's transactions, including the consideration to be paid or received, will be reasonable and fair and will not involve overreaching on the part of any person involved. Furthermore, applicants believe that the proposed transactions will be consistent with the policies of the Trust as recited in its registration statement.

Section 14(a) of the Act

1. Section 14(a) of the Act requires in substance that an investment company have $100,000 of net worth prior to making a public offering. Applicants believe that each Trust Series will comply with this requirement because the Sponsor will deposit substantially more than $100,000 of Fund shares in each Trust Series. Applicants assert, however, that a Trust Series would not satisfy section 14(a) because of the Sponsor's intention to sell all of its Units.

2. Rule 14a–3 under the Act exempts unit investment trusts from section 14(a) if certain conditions are met, one of which is that the Trust invest only in ''eligible trust securities,'' as defined in the rule. Applicants submit that the Trust could not rely on the rule because Fund shares are not eligible trust securities. Consequently, applicants seek an exemption under section 6(c) from the net worth requirement of section 14(a). Applicants state that the Trust and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to ''eligible trust securities.''

Section 19(b) of the Act

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, excepts a unit investment trust investing in ''eligible trust securities'' (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Trust does not limit its investments to ''eligible trust securities,'' the Trust does not qualify for the exemption in paragraph (c) of rule 19b–1. Therefore, applicants request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares to be distributed to Unitholders along with the Trust's regular distributions. Applicants state that, in all other respects, the Trust will comply with section 19(b) and rule 19b–1. Applicants assert that the abuses that section 19(b) and rule 19b–1 were designed to prevent do not arise with regard to the Trust. Applicants state that any gains from the redemption of Fund shares would be triggered by the need to meet Trust expenses or by requests to redeem Units, events over which the Sponsor and the Trust have no control.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. Each Trust Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges, distribution-related fees, and service fees relating to the Units, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Trust relating to its acquisition, holding, or disposition of shares of the Funds, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

3. No Fund will acquire securities of any other investment company in excess

of the limits contained in section 12(d)(1)(A) of the Act.

4. The Trust and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to ''eligible trust securities.''

5. No Trust Series will terminate within thirty days of the termination of any other Trust Series that holds shares of one or more common Funds.

6. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of an in-kind distribution option will disclose that Unitholders who elect to receive Fund shares will incur any applicable rule 12b–1 fees.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–9884 Filed 4–14–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23108; 812–10812]

Sanford C. Bernstein Fund, Inc., et al.; Application

April 9, 1998.

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

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered open-end management investment companies to deposit their uninvested cash balances in a joint account to be used to enter into short-term investments.

APPLICANTS: Sanford C. Bernstein Fund, Inc. (the ''Fund''), and Sanford C. Bernstein & Co., Inc. (''Bernstein'').

FILING DATES: The application was filed on October 7, 1997 and amended on April 2, 1998. 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 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 4, 1998, 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. Applicants, 767 Fifth Avenue, New York, NY 10153.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Nadya B. Roytblat, Assistant Director, 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 SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Fund, organized as a Maryland corporation, is registered under the Act as an open-end management investment company. The Fund is a series company and currently has eleven portfolios (''Portfolios'').[1]

2. Bernstein, organized as a New York corporation, is an investment adviser registered under the Investment Advisers Act of 1940. Bernstein serves as the investment adviser to each Portfolio.

3. Each of the Portfolios may have uninvested cash balances available. The amount of the cash balances, on any given day is a function of a number of factors, such as portfolio management decisions, shareholder purchases and redemptions, and settlement of trades on dates other than predicted. Each Portfolio is authorized by its investment policies and restrictions to invest a portion of its uninvested cash balances in short-term liquid assets, including commercial paper, repurchase agreements, daily variable rate demand notes, Treasury bills, United States government agency certificates, term bank deposits, certificates of deposits and bankers acceptances (''Short Term Investments''). The assets of the Portfolios are held by a bank custodian, which is not an affiliated person of either the Fund or Bernstein.

4. Currently, Bernstein must purchase Short Term Investments separately on behalf of each Portfolio. Applicants believe that the separate purchasing of Short Term Investments results in certain inefficiencies, increased costs, and a limitation on the return. Applicants propose that the Portfolios deposit uninvested cash balances available on each trading day into a joint account (the ''Joint Account'') and that the daily balance of the Joint Account be invested in Short Term Investments. The sole function of the Joint Account will be to provide a convenient means of aggregating what otherwise would be one or more daily transactions for each Portfolio necessary to manage the Portfolio's respective daily uninvested cash balances.

5. Bernstein will not charge any additional or separate fees for operating or advising the Joint Account and will have no monetary participation in the Joint Account. Bernstein will be responsible for investing Portfolio funds held in the Joint Account, establishing accounting and control procedures, and ensuring equal treatment of the Portfolios.

6. Any repurchase agreements entered into through the Joint Accounts will comply with the terms of Investment Company Act Release No. 13005 (February 2, 1983). Applicants acknowledge that they have a continuing obligation to monitor the SEC's published statements on repurchase agreements and other Short Term Investments. Applicants represent that each Portfolio will conform its investments and adopt any appropriate systems and standards to comply with any future SEC guidelines with respect to any type of Short Term Investments.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17f–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating in any joint enterprise or arrangement in which the investment company is a participant, unless the SEC has issued an order authorizing the arrangement.

2. Applicants believe that each Portfolio, by participating in the Joint Account, and Bernstein, by managing the Joint Account, could be deemed to be a ''joint participant'' in a transaction. In addition, the Joint Account could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1 under the Act.

[1] Applicants also request relief for all future portfolios of the Fund and for all future registered open-end management investment companies advised by Bernstein.