

and the Commission's service company rules, rule 53(a)(3), and the Commission's authorization in CP&L Energy, Inc., Holding Co. Act Release No. 27284 (Nov. 27 2000), similar operations services under the Operating Agreement to EWGS that may be developed and owned, directly or indirectly, by Progress Energy Ventures.

Services and the Retail Companies will render services to Richmond, at cost computed in accordance with section 13(b) and rules 90 and 91 under the Act. These services will include general executive and advisory services; power operations; general engineering; design engineering; purchasing; accounting, finance and treasury services; tax counseling; counseling on insurance and pensions; other corporate services relating to rates, budgeting, public relations, employee relations, systems and procedures; and other services with respect to business and operations.

F. Income Tax Allocation Agreement

Applicants proposed that Richmond participate in the Progress Energy income tax allocation agreement currently subject to a reservation of jurisdiction by the Commission under the December Order.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-18640 Filed 7-25-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25070; 812-11992]

The Gabelli Equity Trust Inc., et al.; Notice of Application

July 20, 2001.

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.

SUMMARY: Applicants request an order to permit certain registered closed-end management investment companies to make periodic distributions of long-term capital gains, as often as monthly, on their outstanding common stock and as often as distributions are specified in the terms of any preferred stock

outstanding. The order would supersede a prior order ("Prior Order").¹

Applicants: The Gabelli Equity Trust Inc. ("GET"), The Gabelli Global Multimedia Trust Inc. ("GGMT"), The Gabelli Convertible Securities Fund, Inc. ("GCSF"), The Gabelli Utility Trust ("GUT" and together with GET, GGMT and GCSF, the "Existing Funds"), Gabelli Funds, LLC ("Gabelli"), and each registered closed-end management investment company advised in the future by Gabelli (including an successor in interest,² or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Gabelli (the "Future Funds" and together with the Existing Funds, the "Funds").³

Filing Dates: The application was filed on February 22, 2000 and amended on June 22, 2001 and July 18, 2001.

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 August 14, 2001 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. Applicants, c/o Richard T. Prins, Esq., Skaden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036-6522.

FOR FURTHER INFORMATION CONTACT:

Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

¹ Gabelli Equity Trust Inc., et al., Investment Company Act Release Nos. 23051 (Feb. 27, 1998) (notice) and 23072 (Mar. 23, 1998) (order).

² 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.

³ 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 and conditions of the application.

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 (telephone (202) 942-8090).

Applicants' Representations

1. GET, GGMT and GUT are non-diversified, closed-end management investment companies registered under the Act. GCSF is a diversified, closed-end management investment company registered under the Act. GET, GGMT and GCSF are organized as Maryland corporations. GUT is organized as a Delaware business trust. GET's primary investment objective is to seek long-term growth of capital by investing at least 65% of its total assets in a portfolio of equity securities. GGMT's investment objective is long-term growth of capital by investing in securities of foreign and domestic companies in the telecommunications, media, publishing and entertainment industries. GCSF's investment objective is to seek a high level of total return on its assets by investing primarily in convertible securities. GUT's investment objective is long-term growth of capital and income, primarily through investing in equity securities of companies in the utility industry. GET's GGMT's and GCSF's common and preferred stock, and GUT's common stock, are listed and traded on the New York Stock Exchange. Gabelli, an investment adviser registered under the Investment Advisers Act of 1940, serves as each Existing Fund's investment adviser.

2. On November 15, 2000, the board of directors of each Existing Fund ("Board"), including a majority of the members who are not "interested persons," as defined in section 2(a)(19) of the Act ("disinterested directors"), of such Fund, concluded that the distribution policy of such Fund would be in the best interests of the Fund's shareholders ("Distribution Policy").⁴ The Distribution Policy would permit each Fund to make periodic long-term capital gains distributions as often as monthly with respect to its common stock and as often as distributions are specified in the terms of its preferred stock, so long as it maintains in effect a Distribution Policy (a) with regards to its common stock of at least a minimum fixed percentage per year of the net asset value ("NAV") or market price per share of its common stock or at least a

⁴ Applicants state that the Board of each Future Fund intending to rely on the requested order, including a majority of its disinterested directors, will make a similar finding prior to implementing a distribution policy in reliance on the order.

minimum fixed dollar amount per year, and (b) with regards to each series of its preferred stock of a specified percentage of liquidation preference, whether such specified percentage is determined at the time the preferred stock is initially, pursuant to periodic remarketing or auctions or otherwise. Applicants believe that the discount at which each Fund's common stock may trade may be reduced if the Funds are permitted to pay capital gains dividends more frequently than permitted under rule 19b-1 under the Act. In addition, applicants state that to the extent that any of the Fund's preferred stock pays dividends less frequently than investors in that type of preferred stock would expect, such Fund is at a competitive disadvantage and, consequently, is likely to be required to pay a higher dividend rate on its preferred stock than issuers who pay at the desired frequency.

3. Applicants state that the Distribution Policy with respect to preferred stock of the Funds and the Distribution Policy with respect to common stock of the Funds will not be related to one another in any way. Applicants state that the Distribution Policy with respect to each Fund's common stock will be initially established and reviewed at least annually in light of the Fund's performance by the Board of the Fund.

4. Applicants request relief to permit each Fund, so long as it maintains in effect a Distribution Policy, to make periodic long-term capital gains distributions, as often as monthly, on its outstanding common stock and as specified by the terms of any preferred stock outstanding. The requested order would supersede the Prior Order that permitted the Funds to make quarterly distributions of long-term capital gains.

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 at 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. Applicants assert that rule 19b-1 under the Act, by limiting the number of net long-term capital gains distributions that the Funds may make with respect to any one year, would prevent implementation of the Funds' proposed Distribution Policy. Applicants state that because each Fund expects to realize net long-term capital gains as often as every month, the combination of Revenue Ruling 89-81 and the accounting interpretation relating to rule 19b-1 would cause each Fund to treat a portion of such net long-term capital gains as being distributed each time it has incremental or undistributed long-term capital gains for the current distribution period. Applicants state that Revenue Ruling 89-81 takes the position that if a regulated investment company has two classes of shares, it may not designate distributions made to either class in any year as consisting of more than such class's proportionate share of particular types of income, such as capital gains. Consequently, applicants state that any payments of long-term capital gains to holders of common stock require proportionate allocations of such long-term capital gains to the preferred stock, which can be extremely difficult to do.

3. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of the rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicants state that the Distribution Policies, including the fact that the distributions called for by the policies may include returns of capital to the extent that a Fund's net investment income and net capital gains are insufficient to meet the fixed dividend, have been fully described in the Funds' periodic communications to their shareholders, including the periodic report to shareholders following the institution of any such policy. Applicants state that, in accordance with rule 19a-1 under the Act, a statement showing the source or sources of the distribution accompanies and will accompany each distribution (or the confirmation of the reinvestment thereof under a Fund's common stock distribution reinvestment plan). Applicants state that, for both the common stock and the preferred stock, the amount and sources of distributions received during the year has been or will be included on each Fund's IRS Form 1099-DIV reports of distributions during the year, which will be sent to each shareholder who received

distributions (including shareholders who have sold shares during the year). Applicants state that this information, on an aggregate basis, also has been, or will be, included in each Fund's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b-1 is that frequent 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 distribution ("selling the dividend") where the dividend results in an immediate corresponding reduction in NAV 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 assert that by paying out periodically any capital gains that have occurred, at least up to the fixed periodic payout amount, the Funds' Distribution Policies help avoid the buildup of end-of-the-year distributions and accordingly actually help avoid the scenario in which an investor acquires shares in the open market that are subject to a large upcoming capital gains dividend. Applicants also state that the "selling the dividend" concern is not applicable to preferred stock, which entitles a holder to a specific period dividend and, like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment. In addition, applicants state that any rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date of a quarterly dividend. Thus, applicants state that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, a Fund's Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any offering by a Fund of transferable rights will comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. 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 relief satisfies this standard.

Applicants' Condition

Applicants agree that the order granting the requested relief with respect to the Funds' common stock shall terminate with respect to a Fund upon the effective date of a registration statement under the Securities Act of 1933, as amended, for any future public offering of common stock of the Fund after the date of the requested order and after the Fund's initial public offering other than:

(i) A rights offering to shareholders of such Fund, provided that (a) shares are issued only within the 15-day period immediately following the record date of a monthly dividend, or within the six-week period following the record date of a quarterly dividend; (b) the prospectus for such rights offering makes it clear that common shareholders exercising rights will not be entitled to receive such dividend with respect to shares issued pursuant to such rights offering; and (c) such Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization; unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-18639 Filed 7-25-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25069; 812-12522]

The Pillar Funds, et al.; Notice of Application

July 20, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission")

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

SUMMARY: Applicants request an order to permit certain series of The Galaxy Fund ("Galaxy") and Galaxy Fund II ("Galaxy II") to acquire substantially all of the assets and liabilities of certain series of The Pillar Funds ("Pillar") (the "Reorganization"). Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

Applicants: Galaxy, Galaxy II, Pillar and Fleet Investment Advisors Inc. ("Fleet").

Filing Dates: The application was filed on May 18, 2001. 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 August 14, 2001, 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 20549-0609. Galaxy and Galaxy II, 4400 Computer Drive, Westborough, MA 01581-5108. Pillar, 101 Federal Street, Boston, MA 02110. Fleet, 100 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Staff Attorney, at 202-942-0553, 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 may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone 202-942-8090).

Applicants' Representations

1. Pillar, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is comprised of 17 series, 16 of which will participate in the Reorganization (the "Acquired Funds").¹

¹ The Acquired Funds are (1) Pillar U.S. Treasury Securities Money Market Fund, (2) Pillar U.S.

2. Galaxy, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Galaxy currently offers 37 series, 12 of which will participate in the Reorganization (the "Operating Galaxy Funds").² Galaxy is also organizing three new shell series, each of which will participate in the reorganization (the "Shell Acquiring Funds" and together with the Operating Galaxy Funds, the "Galaxy Funds").³

3. Galaxy II, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Galaxy II currently offers five series, one of which, the Galaxy II Large Company Index Fund, will participate in the Reorganization (together with the Operating Galaxy Funds, the "Operating Acquiring Funds"). The Operating Acquiring Funds and the Shell Acquiring funds are referred to collectively as the "Acquiring Funds." Each of the Acquiring funds and each of the Acquired Funds are referred to individually as a "fund" and collectively as the "funds." Applicants state that the investment objectives, policies and restrictions of each Acquired Fund are substantially similar to those of the corresponding Acquiring Fund.

4. Fleet, a subsidiary of FleetBoston Financial Corporation ("FleetBoston"), is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Fleet serves as investment adviser to the Operating Acquiring Funds and the Acquired

Treasury Securities Plus Money Market Fund, (3) Pillar Prime Obligation Money Market Fund, (4) Pillar Institutional Select Money Market Fund, (5) Pillar Tax-Exempt Money Market Fund, (6) Pillar Intermediate-Term Government Securities Fund, (7) Pillar Fixed Income Fund, (8) Pillar New Jersey Municipal Securities Fund, (9) Pillar Balanced Fund, (10) Pillar Equity Income Fund, (11) Pillar Mid Cap Fund and (12) Pillar International Equity Fund, (13) Pillar Pennsylvania Municipal Securities Fund, (14) Pillar Equity Value Fund, (15) Pillar Equity Growth Fund and (16) Pillar Equity Index Fund. The one remaining series Pillar High Yield Bond Fund will liquidate and dissolve in early August 2001.

² The Operating Galaxy Funds are (1) Galaxy U.S. Treasury Money Market Fund, (2) Galaxy Institutional Treasury Money Market Fund, (3) Galaxy Money Market Fund, (4) Galaxy Institutional Money Market Fund, (5) Galaxy Tax-Exempt Money Market Fund, (6) Galaxy Intermediate Government Income Fund, (7) Galaxy High Quality Bond Fund, (8) Galaxy New Jersey Municipal bond Fund, (9) Galaxy Asset Allocation Fund, (10) Galaxy Equity Income Fund, (11) Galaxy Growth Fund II and (12) Galaxy International Equity Fund.

³ The Shell Acquiring Funds are (1) Galaxy Pennsylvania Municipal Bond Fund, (2) Galaxy Large Cap Value Fund and (3) Galaxy Large Cap Growth Fund. The registration statement for the shares of the Shell Acquiring Funds was filed with the Commission on May 18, 2001, and it is anticipated that it will be declared effective on or about August 1, 2001.