

For the Nuclear Regulatory Commission.
Richard J. Laufer,
Section Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.
 [FR Doc. E5-5854 Filed 10-21-05; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27117; 812-13097]

BBH Fund, Inc. and Brown Brothers Harriman & Co.; Notice of Application

October 18, 2005.

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

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

Summary of the Application: The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements ("Subadvisory Agreements") without shareholder approval.

Applicants: BBH Fund, Inc. ("BBH") and Brown Brothers Harriman & Co. (the "Adviser," together with BBH, the "Applicants").

Filing Date: The application was filed on June 14, 2004 and amended on June 17, 2005, August 8, 2005 and October 12, 2005.

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 November 14, 2005, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303. Applicants, Gail C. Jones, Esq., Reed Smith LLP, Federated Investors Tower, 12th Floor, 1001 Liberty Avenue, Pittsburgh, PA 15222-3779.

FOR FURTHER INFORMATION CONTACT: Todd F. Kuehl, Branch Chief, at (202) 551-6821 (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, 100 F Street, NE., Washington, DC 20549-0102 (telephone (202) 551-5850).

Applicants' Representations

1. BBH, a Maryland corporation, is registered under the Act as an open-end management investment company. BBH currently offers multiple series (each a "Fund," and collectively, the "Funds"), each of which has its own investment objectives, policies and restrictions.¹ BBH International Equity Fund ("International Equity Fund") is the only Fund that currently intends to rely on the requested order.

2. The Adviser, registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as investment adviser to each Fund pursuant to an investment advisory agreement with BBH ("Advisory Agreement"), that was approved by the board of directors of BBH (the "Board"), including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), and the shareholders of each Fund. Under the terms of the Advisory Agreement, the Adviser provides the International Equity Fund with investment research, advice and supervision, and furnishes an investment program for the Fund consistent with the investment objectives and policies of the Fund. The Adviser has entered into, or will enter into, Subadvisory Agreements with subadvisers ("Subadvisers"), to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for the International Equity Fund. Pursuant to the Advisory Agreement, the Adviser receives a fee from the International Equity Fund based on the average daily

¹ Applicants also request relief with respect to any other existing or future registered open-end management investment company or series thereof that: (a) is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) uses the management structure described in this application; and (c) complies with the terms and conditions of this application (included in the term "Funds"). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an Applicant. If the name of any Fund contains the name of Subadviser (as defined below), the name of the Adviser that serves as the primary adviser to the Fund will precede the name of the Subadviser.

net assets. Each Subadviser is or will be an investment adviser registered under the Advisers Act. The Adviser has delegated daily management of the International Equity Fund's assets to Subadvisers, who are paid by the Adviser out of the fee it receives from the International Equity Fund. In the future, a Fund may contract directly with and pay a Subadviser directly ("Direct Contract Fund").

3. Applicants request relief to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (an "Affiliated Subadviser").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act 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 company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, 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 policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders will rely on the Adviser, subject to oversight by the Board, to select Subadvisers for the Funds. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose costs and unnecessary delays on the Funds and may preclude the Adviser from acting promptly in a manner considered advisable by the

Board. Applicants also note that the Advisory Agreement will remain subject to the shareholder approval requirements in section 15(a) of the Act and rule 18f-2 under the Act.

4. Applicants note that the Commission has proposed rule 15a-5 under the Act and agree that the requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.²

Conditions

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

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before shares of such Fund are offered to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the "manager of managers" structure described in the application. Such Fund's prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management and administrative services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval by the Board, will (i) Set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets; (iii) when appropriate allocate and reallocate a Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of the Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Fund's investment objective, policies, and restrictions.

4. Each Fund will comply with the fund governance standards that the

Commission adopted in Investment Company Act Release No. 26520, by the compliance date set forth therein ("Compliance Date"). Prior to the Compliance Date, a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors. Any person who acts as legal counsel for the Independent Directors will be an independent legal counsel, as defined in rule 0-1(a)(6) under the Act.

5. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

6. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Shareholders of any Direct Contract Fund will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Fund that have been approved by the shareholders of the Fund.

8. No director or officer of a Fund, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

9. Within 90 days of the hiring of a new Subadviser, the Adviser will furnish shareholders of the applicable Fund all information about the new Subadviser that would be included in a proxy statement. To meet this obligation, the Adviser will provide shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

10. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8628; 34-52629, File No. 265-23]

Advisory Committee on Smaller Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Time change for meeting of SEC Advisory Committee on Smaller Public Companies.

The Securities and Exchange Commission Advisory Committee on Smaller Public Companies is providing notice that it is changing the start time of its public meeting on Monday, October 24, 2005, from 9 a.m. to 9:30 a.m. This meeting will be held in Multi-Purpose Room L006 of the Commission's headquarters, 100 F Street, NE., Washington, DC 20549. The start time for the second day of this meeting Tuesday, October 25, 2005, will remain 9 a.m.

FOR FURTHER INFORMATION CONTACT: Kevin M. O'Neill, Special Counsel, at (202) 551-3260, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(a), and the regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: October 18, 2005.

Jonathan G. Katz,

Committee Management Officer.

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² Investment Company Act Release No. 26230 (Oct. 23, 2003).