

Internet electronic mail to  
**INFOCOLLECTS@NRC.GOV.**

Dated at Rockville, Maryland, this 23rd day of February 2005.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 05-3979 Filed 3-1-05; 8:45 am]

**BILLING CODE 7590-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Rel. No. IA-2362/803-179]

### **Parkland Management Company, L.L.C.; Notice of Application**

February 24, 2005.

**AGENCY:** Securities and Exchange Commission ("SEC"); Notice of Application.

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

*Applicant:* Parkland Management Company, L.L.C. ("Applicant").

*Relevant Advisers Act Sections:*

Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

*Summary of Application:* Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11), which defines the term "investment adviser."

*Filing Dates:* The application was filed on December 4, 2003 and amended on June 28, 2004, September 8, 2004, and January 18, 2005.

*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 Applicant 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 21, 2005 and should be accompanied by proof of service on Applicant, 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 Fifth Street, NW., Washington, DC 20549. Applicant, Parkland Management Company, L.L.C., c/o Leo Krulitz, 1001 Lakeside Avenue, Suite 900, Cleveland, Ohio 44114.

**FOR FURTHER INFORMATION CONTACT:** Daniel S. Kahl, Senior Counsel, or

Jamey Basham, Branch Chief, at (202) 942-0719 (Division of Investment Management, Office of Investment Adviser 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.

### **Applicant's Representations**

1. Applicant was organized as an Ohio corporation in 1987 by the H.R.H. Family Trust (the "Trust"), which owned all of Applicant's outstanding stock. The Trust beneficiaries were certain members of the Harry R. Horvitz and Lois U. Horvitz family. In 1998, Applicant was reorganized as a single member Ohio limited liability company, and in January 2003, ownership was transferred equally to the three children of Harry R. Horvitz and Lois U. Horvitz.

2. Applicant operates as the "family office" for Lois U. Horvitz and (i) the lineal descendants of Lois and her now-deceased husband Harry R. Horvitz, (ii) the spouses of those lineal descendants, (iii) the sister of one such spouse and (iv) the mother and two children of that sister (collectively the "Family"). In addition to the Family, Applicant's other clients consist of (i) trusts, partnerships, limited liability companies, corporations, and other entities that both (A) are wholly-owned or controlled by members of the Family and (B) were created either for the sole benefit of Family members or for the benefit of both Family members and charitable organizations and (ii) foundations created by members of the Family (collectively "Clients").

3. Applicant represents that the "family office" services it provides to Clients include: developing asset allocation strategies; serving as the general partner to three partnerships wholly owned by the Family, which hold investments in private equity funds and hedge funds managed by third parties; recommending investment advisers and monitoring and recommending termination of such advisers; managing cash; preparing financial and tax reports; developing tax planning strategies; implementing estate planning activities; bill paying; travel planning; household staff supervision and payroll administration; and administering grant and scholarship programs for foundations established by the Family.

4. Applicant represents that the fees it receives have not generated, and are not intended to generate, a profit for Applicant. Applicant represents that its fees are structured so that fees it

receives from Clients only cover its direct costs and overhead costs.

5. Applicant represents that it does not hold itself out to the public as an investment adviser. Applicant represents that it is not listed in any local telephone book as an investment adviser and is listed in the building directory merely by its name, which does not connote investment advisory activities. Applicant represents that it does not engage in any advertising, attend any investment management-related conferences as a vendor, or conduct any marketing activities whatsoever.

6. Applicant represents that it has no public retail or institutional clients, and has never solicited, and does not plan to solicit or accept clients from the retail or institutional investing public. Applicant further represents that its sole purpose is to serve as a "family office" for the Family, and at no time will it seek or accept investment advisory clients other than Clients.

### **Applicant's Legal Analysis**

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities . . . . Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of "investment adviser" persons that are not within the intent of section 202(a)(11).

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement.

3. Applicant asserts that it does not qualify for any of the exemptions provided by section 203(b). Applicant also asserts that it is not prohibited from registering with the SEC under Section 203A(a) because it has assets under management of not less than \$25,000,000.

4. Applicant requests that the SEC declare it to be a person not within the intent of section 202(a)(11). Applicant states that there is no public interest in requiring it to be registered under the Advisers Act. Applicant states that it is a private organization that was formed to be the "family office" for the Family. Applicant represents that all of its clients are either members of the Family or are entities created by or for the

benefit of the Family. Applicant states that it has no public clients in the sense of retail or institutional investors, and that it has no plans to solicit or accept clients from the retail or institutional public. Applicant also states that it does not hold itself out to the public as an investment adviser, does not engage in any advertising, or attend investment management-related conferences as a vendor or conduct any marketing activities. Applicant asserts that serving as the "family office" for the Family has been, is, and will continue to be the sole purpose for its existence and operation.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-826 Filed 3-1-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26775; 812-13168]

### Boston Safe Advisors, Inc., et al.; Notice of Application and Temporary Order

February 24, 2005.

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

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

*Summary of Application:* Applicants have received a temporary order exempting them and other companies of which CIBC Mellon Trust Company ("CIBC Mellon") is or becomes an affiliated person ("Covered Persons") from section 9(a) of the Act with respect to a securities-related injunction entered against CIBC Mellon on February 24, 2005 by the U.S. District Court for District of Columbia (the "Injunction") until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order with respect to the Injunction.

*Applicants:* Boston Safe Advisors, Inc., The Boston Company Asset Management LLC, Dreyfus Service Corporation ("Dreyfus Service"), The Dreyfus Corporation, Founders Asset Management LLC, Franklin Portfolio Associates LLC, Mellon Capital Management Corporation, Mellon Equity Associates LLP, Mellon Funds Distributor, L.P. ("Mellon Funds"), Newton Capital Management Limited, Pareto Partners and Standish Mellon Asset Management Company LLC

(together, "Applicants," included in the term Covered Persons).

*Filing Date:* The application was filed on February 17, 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 March 21, 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, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, Mellon Financial Corporation, One Mellon Center, 500 Grant Center, Pittsburgh, Pennsylvania 15258-0001.

**FOR FURTHER INFORMATION, CONTACT:** Shannon Conaty, Attorney-Adviser, or Todd F. Kuehl, Branch Chief, at (202) 551-6809 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application for a permanent order. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

### Applicants' Representations

1. CIBC Mellon, a Canadian corporation, is engaged in the business of providing transfer agent and corporate trust services. Applicants (other than Dreyfus Service and Mellon Funds) serve as investment adviser or sub-adviser for one or more registered investment companies ("Funds"). Dreyfus Service and Mellon Funds act as the depositor or principal underwriter for certain Funds.

2. On February 24, 2005, the U.S. District Court for the District of Columbia entered the Injunction against CIBC Mellon in a matter brought by the Commission.<sup>1</sup> The Commission alleged in the complaint ("Complaint") that CIBC Mellon violated sections 5(a)(1)

and (2) of the Securities Act of 1933, sections 10(b), 15(a) and 17A of the Securities Exchange Act of 1934 ("Exchange Act") and rule 10b-5 under the Exchange Act. The Complaint alleged that CIBC Mellon participated in a fraudulent scheme to promote, distribute and sell the stock of a now defunct Canadian telecommunications company by supplying the perpetrators of the scheme with a virtually limitless supply of purportedly "free trading" stock and that CIBC Mellon failed to register with the Commission as a transfer agent and as a broker-dealer. The Injunction enjoined CIBC Mellon, its agents, servants, employees, attorneys and all persons in active concert or in participation with them from violating the provisions of the federal securities laws cited in the Complaint. Without admitting or denying the allegations in the Complaint, CIBC Mellon consented to the entry of the Injunction as well as the payment of disgorgement and penalties and other equitable relief.

### Applicants' Legal Analysis

Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that CIBC Mellon is an affiliated person of the Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that the entry of the Injunction would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

1. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have

<sup>1</sup> *Securities and Exchange Commission v. CIBC Mellon Trust Company*, 1:05CV0333 (D.D.C., filed February 24, 2005) (the "Action").