

be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW, Washington, DC 20415 (202) 606-1500.

Dated: December 30, 2002.

**Mary M. Rose,**

*Chairperson, Federal Prevailing Rate Advisory Committee.*

[FR Doc. 03-298 Filed 1-7-03; 8:45 am]

**BILLING CODE 6325-49-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25880; 812-12676]

### Neuberger Berman Equity Funds, et al.; Notice of Application

January 2, 2003.

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

**ACTION:** Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 thereunder to permit certain joint transactions.

*Summary of Application:* Applicants request an order to permit (a) Certain registered investment companies to pay an affiliated lending agent a fee based on a share of the revenue derived from securities lending activities; and (b) the registered investment companies to lend portfolio securities to affiliated broker-dealers. The requested order would supersede certain prior orders.<sup>1</sup>

*Applicants:* Neuberger Berman Equity Funds, Neuberger Berman Income Funds, Neuberger Berman Advisers Management Trust, Neuberger Berman Intermediate Municipal Fund Inc., Neuberger Berman California Intermediate Municipal Fund Inc., Neuberger Berman New York Intermediate Municipal Fund Inc., Neuberger Berman Real Estate Income Fund Inc. (the "Funds"), Neuberger Berman, LLC ("Neuberger Berman"), and Neuberger Berman Management Inc. ("NBMI").

*Filing Dates:* The application was filed on October 26, 2001 and amended on December 23, 2002.

<sup>1</sup> Energy Fund Incorporated, Investment Company Act Release Nos. 11175 (May 19, 1980) (notice) and 11249 (July 3, 1980) (order); Energy Fund Inc., Investment Company Act Release Nos. 14452 (April 4, 1985) (notice) and 14498 (May 2, 1985) (order).

*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 January 27, 2003, 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 5th Street, NW, Washington, DC 20549-0609. Applicants: c/o Ellen Metzger, Esq., Neuberger Berman, LLC, 605 3rd Avenue, 21st Floor, New York, NY 10158-3698.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Senior Counsel, at (202) 942-0582, 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 Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

### Applicants' Representations

1. Each of the Funds is either an open-end or closed-end management investment company registered under the Act. Several of the Funds are comprised of multiple series (the Funds and any existing or future series thereof, collectively, the "Lending Funds"). NBMI is the investment manager and administrator to the Funds and their series and the principal underwriter of those Funds that are open-end management investment companies. Neuberger Berman serves as the sub-adviser to the Funds. Pursuant to the sub-advisory agreement with NBMI, Neuberger Berman is compensated for providing investment research; however, all investment decisions for the Funds are made by NBMI. Both NBMI and Neuberger Berman are registered as investment advisers under the Investment Advisers Act of 1940 and broker-dealers under the Securities Exchange Act of 1934. NBMI and Neuberger Berman are wholly owned subsidiaries of Neuberger Berman Inc., a publicly owned holding company.

2. Applicants request that any relief granted pursuant to the application also apply to any other registered investment company or series thereof for which NBMI or any entity controlling, controlled by or under common control with NBMI serves as investment adviser. All existing entities that currently intend to rely on the order have been named as applicants. Any other existing or future entity that wishes to rely on the order will do so only in accordance with the terms and conditions of the application.

3. The Lending Funds propose to enter into an agency securities lending program (the "Securities Lending Program"). The agent for the Securities Lending Program will be an operating unit of Neuberger Berman (the "NB Securities Lending Group").<sup>2</sup> The NB Securities Lending Group's activities as lending agent for the Lending Funds will be conducted under the supervision of investment management personnel of NBMI. Subject to the parameters set forth in procedures approved by the board of trustees or directors ("Board") of each Lending Fund, NBMI will pre-approve eligible borrowers. In addition, NBMI will be responsible for determining what portion, if any, of assets of the Lending Funds will be allocated to securities lending activities, subject to each Lending Fund's fundamental or operating policies. NBMI will be responsible for investing all cash collateral received in respect of the securities loans.

4. As securities lending agent for the Lending Funds, the NB Securities Lending Group will be responsible for, among other things, selecting borrowers from the pre-approved list, entering into loans of pre-approved securities with pre-approved borrowers on pre-approved terms, and performing administrative or ministerial functions in connection with each Lending Fund's securities lending program. The NB Securities Lending Group will deliver loaned securities received from the Lending Funds to borrowers; arrange for the return of loaned securities to the Lending Funds at the termination of the loans; monitor daily the value of the loaned securities and collateral; request that borrowers add to the collateral when required by the loan agreement; and provide recordkeeping and accounting services necessary for the

<sup>2</sup> In addition, the applicants may utilize the employees of entities controlling, controlled by or under common control with Neuberger Berman in performing the securities lending activities to be performed by NB Securities Lending Group.

operation of the Securities Lending Program.<sup>3</sup>

5. Securities loans generally are collateralized by U.S. Government securities, cash or letters of credit. When the collateral is cash, the lender invests the cash collateral during the loan period and, after paying the borrower an agreed upon interest rate, retains the remainder thereof, which is usually shared with the securities lending agent. If the collateral is a U.S. Government security or letter of credit, the borrower pays a lending fee, which is usually shared between the lender and the securities lending agent.

6. The applicants request relief to permit: (a) The Lending Funds to pay Neuberger Berman, or an entity controlling, controlled by, or under common control with Neuberger Berman, a fee based on a share of the revenue derived from securities lending activities; and (b) the Lending Funds to lend portfolio securities to Neuberger Berman and any broker-dealer, other than NBMI, that controls, is controlled by, or is under common control with, Neuberger Berman (collectively, the "Affiliated Broker-Dealers").

#### Applicants' Legal Analysis

##### A. Payment of Lending Agent Fees

1. Section 17(d) of the Act and rule 17d-1 thereunder prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan, in which the investment company participates unless the Commission has approved the transaction. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include the investment company's adviser. As the Lending Funds' sub-adviser, Neuberger Berman may be deemed to be an affiliated person of the Lending Funds. Because a fee arrangement between a lending agent and a Lending Fund, under which compensation is based on a percentage of the revenue generated by securities lending transactions, may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d-1, applicants request an order to permit each Lending Fund to pay,

<sup>3</sup> The personnel of the NB Securities Lending Group who will provide day-to-day lending agency services to the Lending Funds do not and will not provide investment advisory services to the Lending Funds, or participate in any way in the selection of portfolio securities or other aspects of the management of the Lending Funds.

and Neuberger Berman to accept, such fees in connection with services provided by Neuberger Berman to a Lending Fund.

2. Applicants propose that each Lending Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with the NB Securities Lending Group will meet the standards of rule 17d-1:

a. In connection with the approval of the NB Securities Lending Group as lending agent for the Lending Funds, and implementation of the proposed fee arrangement, a majority of the Board of each Lending Fund (including a majority of the trustees or directors of each Lending Fund who are not "interested persons" as defined in section 2(a)(19) of the Act (the "Independent Trustees/Directors")) will determine that (i) The contract with the NB Securities Lending Group is in the best interests of the Lending Fund and its shareholders; (ii) the services to be performed by the NB Securities Lending Group are appropriate for the Lending Fund; (iii) the nature and quality of the services to be provided by the NB Securities Lending Group are at least equal to those provided by others offering the same or similar services; and (iv) the fees for the NB Securities Lending Group's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

b. In connection with the approval of the NB Securities Lending Group as lending agent for the Lending Funds and the initial implementation of the proposed fee arrangement, the Board of each Lending Fund will review competing quotes with respect to lending agency fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

c. Each Lending Fund's contract with the NB Securities Lending Group for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board, including a majority of the Independent Trustees/Directors, makes the findings referred to in paragraph (a) above.

d. The Board, including a majority of the Independent Trustees/Directors, will (i) determine at each regular quarterly meeting on the basis of reports submitted by the NB Securities Lending Group that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review not less frequently than

annually the conditions and procedures for continuing appropriateness.

e. Each Lending Fund will (i) Maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions described in the application and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Securities Lending Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

##### B. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company, or an affiliated person of such a person ("second-tier affiliate"), acting as principal, to borrow money or other property from the registered investment company. Applicants state that because Neuberger Berman is sub-adviser to the Lending Funds, and the other Affiliated Broker-Dealers are under common control with Neuberger Berman and NBMI, an Affiliated Broker-Dealer may be considered an affiliated person, or a second-tier affiliate, of a Lending Fund. Accordingly, section 17(a)(3) would prohibit the Affiliated Broker-Dealers from borrowing securities from the Lending Funds.

2. As noted above, section 17(d) and rule 17d-1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3), and under section 17(d) and rule 17d-1 to permit the Lending Funds to lend portfolio securities to Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Lending Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated broker-dealers.<sup>4</sup> In this regard, applicants state

<sup>4</sup> A "spread" is the compensation earned by a Lending Fund from a securities loan, which compensation is in the form either of a lending fee payable by the borrower to the Lending Fund (when non-cash collateral is posted) or of the excess retained by the Lending Fund over a rebate rate

that at least 50% of the loans made by the Lending Funds, on an aggregate basis, will be made to unaffiliated borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board, including a majority of the Independent Trustees/Directors, or by a committee of the Board made up of Independent Trustees/Directors (the "Lending Committee"), and all transactions with Affiliated Broker-Dealers will be reviewed periodically by an officer of the Lending Fund. The Board, including a majority of the Independent Trustees/Directors, also will review quarterly reports on all lending activity.

**Applicants' Conditions**

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

1. The Securities Lending Program will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.
2. Approval of the Board, including a majority of the Independent Trustees/Directors, shall be required for the initial and subsequent approvals of the NB Securities Lending Group as lending agent for a Lending Fund, for the institution of all procedures relating to the Securities Lending Program, and for any periodic review of loan transactions for which the NB Securities Lending Group acted as lending agent.
3. Each Lending Fund will (i) Maintain and preserve permanently in an easily accessible place a written copy of the procedures (with any modifications) that are followed in connection with lending securities and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or rebate remitted), the identity of the borrower, the terms of the loan, and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable, and that the procedures followed in making such loan were in accordance with the other undertakings set forth in the application.

payable by the Lending Fund to the borrower (when cash collateral is posted and then invested by the Lending Fund).

4. The Lending Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated borrowers.

5. a. All loans will be made with spreads no lower than those provided for in a schedule of spreads, which will be established and may be modified from time to time by the Board and by a majority of the Independent Trustees/Directors or by the Lending Committee ("Schedule of Spreads"). The Schedule of Spreads and any modifications thereto will be ratified by the full Board of each Lending Fund and by a majority of the Independent Trustees/Directors.

b. The Schedule of Spreads will provide for rates of compensation to the Lending Funds that are reasonable and fair, and that are determined in light of those considerations set forth in the application.

c. The Schedule of Spreads will be uniformly applied to all borrowers of the Lending Funds' portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any borrower.

d. If a security is loaned to an unaffiliated borrower with a spread higher than the minimum provided for in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

e. Each Lending Fund's Securities Lending Program will be monitored on a daily basis by an officer of the Lending Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Lending Fund's Board, including a majority of the Independent Trustees/Directors, or the Lending Committee.

6. A Lending Fund will not make any loan to an Affiliated Broker-Dealer unless the income to the Lending Fund attributable to such loan fully covers the transaction costs, if any, incurred in making the loan.

7. The Boards of the Lending Funds, including a majority of the Independent Trustees/Directors, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of any order that may be granted and that such transactions were conducted on terms that were reasonable and fair, and (b) will review no less frequently than annually such

requirements and conditions for their continuing appropriateness.

8. The total value of securities loaned to any one borrower on the approved list will be in accordance with a schedule to be approved by the Board of each Lending Fund, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Lending Fund, computed at market value.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-300 Filed 1-7-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3474]**

**State of Florida**

Sarasota County and the contiguous counties of Charlotte, DeSoto, and Manatee in the State of Florida constitutes a disaster area as a result of a fire that occurred on October 16, 2002, at the Public Storage Inc. storage facility. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 19, 2003, and for economic injury may be filed until the close of business on September 22, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
<b>For Physical Damage:</b>	
Homeowners with credit available elsewhere .....	6.625
Homeowners without credit available elsewhere .....	3.312
Businesses with credit available elsewhere .....	7.000
Businesses and non-profit organizations without credit available elsewhere .....	3.500
Others (including non-profit organizations) with credit available elsewhere .....	6.375
<b>For Economic Injury:</b>	
Businesses and small agricultural cooperatives without credit available elsewhere .....	3.500

The number assigned to this disaster for physical damage is 347405 and for economic injury is 9T6800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)