that invests in such Unregistered Money Market Fund.

10. To engage in Interfund Transactions, the Registered Funds, Unregistered Funds, Managed Accounts and Money Market Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser, or investment advisers which are affiliated persons of each other, common officers, and/or common directors or trustees, solely because a Participating Fund and a Money Market Fund might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

11. The net asset value per share with respect to shares of an Unregistered Money Market Fund will be determined separately for each Unregistered Money Market Fund by dividing the value of the assets belonging to that Unregistered Money Market Fund, less the liabilities of that Unregistered Money Market Fund, by the number of shares outstanding with respect to that Unregistered Money Market Fund.

12. Before a Registered Participating Fund may participate in the Securities Lending Program, a majority of the Board (including a majority of the Disinterested Directors) will approve the Registered Participating Fund's participation in the Securities Lending Program. No less frequently than annually, the Board also will evaluate, with respect to each Registered Participating Fund, any securities lending arrangement and its results and determine that any investment in Cash Collateral in the Money Market Funds is in the best interest of the Registered Participating Fund.

Condition 2 to the Fund-of-Funds Order is amended to read as follows: ''No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that the Underlying Portfolio other than a money market fund acquires securities of another registered or unregistered investment company pursuant to exemptive relief from the Commission permitting the Underlying Portfolio to purchase securities of an affiliated registered or unregistered money market fund for short-term cash management purposes.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15354 Filed 6–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26075; 812–12779]

American Performance Funds, et al.; Notice of Application

June 12, 2003.

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

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered management investment companies to invest uninvested cash and cash collateral in one or more affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act. Prior to relying on the requested order, Applicants would cease relying on a prior order.[1]

APPLICANTS: American Performance Funds, AmSouth Funds, BNY Hamilton Funds, Inc. (''BNY Hamilton Funds''), Citizens Funds, Fifth Third Funds, HSBC Advisor Funds Trust, HSBC Investor Funds and HSBC Investor Portfolios (collectively, the ''HSBC Funds''), Legacy Funds Group (''Legacy Funds''), Mercantile Funds, Inc. (''Mercantile Funds''), Old Westbury Funds, Inc. (''Old Westbury Funds''), Performance Funds Trust (''Performance Funds''), The Victory Portfolios, Vintage Mutual Funds, BOk Investment Advisers, Inc. (''BOk'') (formerly, Investment Concepts, Inc.), AmSouth Investment Management Company, LLC (''AmSouth''), The Bank of New York (''BNY''), Citizens Advisers, Inc. (''Citizens Advisers''), Fifth Third Asset Management, Inc. (''Fifth Third''), HSBC Asset Management (Americas) Inc. (''HSBC''), First Financial Capital Advisors LLC (''First Financial''), Bessemer Investment Management LLC (''Bessemer''), Mercantile Capital Advisors, Inc. (''Mercantile''), Trustmark Investment Advisors, Inc. (formerly, Trustmark Financial Services, Inc.) (''Trustmark''), Victory Capital Management, Inc. (''Victory'') and Investors Management Group, Ltd. (''Investors Management Group'').

Filing Dates: The application was filed on February 1, 2002 and was amended on June 9, 2003. 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 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 July 7, 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 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Ryan M. Louvar, Esq., BISYS, 60 State Street, Suite 1300, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527 or Annette M. Capretta, 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 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

[1] On February 19, 2000, the Commission issued an order amending prior orders under Sections 6(c) and 17(b) of the Act that exempted certain Applicants and certain other entities who are not parties to the application from the provisions of Section 12(d)(1)(A) and Section 17(a) of the Act and that permitted pursuant to rule 17d–1, certain joint transactions in accordance with Section 17(d) and rule 17d–1. *See* Investment Company Act Rel. Nos. 24274 (Feb. 1, 2000) (notice) and 24325 (Feb. 19, 2000) (order); Investment Company Act Rel. Nos. 23962 (Aug. 23, 1999) (notice) and 24021 (Sept. 21, 1999) (order); Investment Company Act Rel. Nos. 23393 (Aug. 18, 1998) (notice) and 23436 (Sept. 15, 1998); Investment Company Act Rel. Nos. 22636 (April 24, 1997) (notice) and 22677 (May 20, 1997) (order); Investment Company Act Rel. Nos. 19695 (Sept. 9, 1993) and 19759 (Oct. 5, 1993) (order).

Applicants' Representations

1. American Performance Funds, AmSouth Funds, Citizens Funds, Fifth Third Funds, HSBC Advisor Funds Trust, HSBC Investor Funds, Legacy Funds and Old Westbury Funds are Massachusetts business trusts that are registered under the Act as open-end management investment companies. BNY Hamilton Funds, Mercantile Funds and Vintage Mutual Funds are Maryland corporations that are registered under the Act as open-end management investment companies. HSBC Investor Portfolios is a New York trust that is registered under the Act as an open-end investment management company. The Performance Funds and The Victory Portfolios are Delaware statutory trusts that are registered under the Act as open-end management investment companies.

2. BOk is the investment adviser to each of the twelve series of the American Performance Funds. AmSouth is the investment adviser to the twenty-four series of the AmSouth Funds. Citizens Advisers is the investment adviser to the twelve series of the Citizens Funds. BNY is the investment adviser to the twenty series of BNY Hamilton Funds. Fifth Third serves as the investment adviser to thirty-five of the thirty-six series of the Fifth Third Funds. HSBC serves as investment adviser to the twenty-one series of the HSBC Funds. First Financial serves as the investment adviser to the three series of the Legacy Funds. Mercantile serves as the investment adviser to the fourteen series of the Mercantile Funds. Bessemer serves as the investment adviser to the five series of the Old Westbury Funds. Trustmark is the investment adviser to the seven series of the Performance Funds. Victory is the investment adviser to the twenty-six series of The Victory Portfolios. Investors Management Group is the investment adviser to the nine series of the Vintage Mutual Funds.

3. The American Performance Funds, AmSouth Funds, BNY Hamilton Funds, Citizens Funds, Fifth Third Funds, the HSBC Funds, Legacy Funds, Mercantile Funds, Old Westbury Funds, Performance Funds, The Victory Portfolios and the Vintage Mutual Funds and their respective series (each series, a ''Fund,'' and collectively, the ''Funds'') each is in the American Performance, AmSouth, BNY Hamilton, Citizens, Fifth Third, HSBC, Legacy, Mercantile, Old Westbury, Performance, Victory and Vintage group of investment companies, respectively, within the meaning of section 12(d)(1)(G)(ii) of the Act (each a ''Fund Group'').

4. Applicants request that relief be extended to any registered open-end management investment company or series thereof for which BOk, AmSouth, BNY, Citizen Advisers, Fifth Third, HSBC, First Financial, Bessemer, Mercantile, Trustmark, Victory or Investors Management Group (each an ''Adviser,'' and any entity controlled by, controlling or under common control with each Adviser, an ''Adviser'')[2] now or in the future serves as investment adviser (collectively with the Funds, the ''Funds'').[3]

5. Each Fund Group has one or more money market Funds (''Money Market Funds''). The Money Market Funds comply with rule 2a–7 under the Act. The Funds that are not Money Market Funds invest in a variety of debt and/or equity securities or other investments in accordance with their respective investment objectives and policies.

6. Applicants state that certain Funds (''Investing Funds'') have, or may be expected to have, cash that has not been invested in portfolio securities (''Uninvested Cash''). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments, or money received from investors. The Investing Funds may participate in a securities lending program under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash (''Cash Collateral,'' and together with Uninvested Cash, ''Cash Balances'').

7. Applicants request an order to permit each of the Investing Funds to invest its Cash Balances in one or more of the Money Market Funds within the same Fund Group, and to permit each of the Money Market Funds to sell its shares to, and redeem its shares from, the Investing Funds within the same Fund Group. Investment of Cash Balances in shares of the Money Market Funds will be made only to the extent that such investments are consistent with each Investing Fund's investment objectives, restrictions, and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if the 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 other acquired investment companies, represent more than 10% of the acquired company's total assets. Section 12(d)(1)(B) of the Act provides, in pertinent part, that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to permit the Investing Funds to invest Cash Balances in the Money Market Funds.

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Fund would not be in a position to gain undue influence over a Money Market Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers, Inc. (''NASD'') Conduct Rules) or if such shares are subject to any such sales load, redemption fees, distribution fees or service fees, the Adviser will waive its advisory fee for each Investing

[2] Each Adviser is registered under the Investment Advisers Act of 1940 or will be exempt from registration.

[3] Each Fund that currently intends to rely on the order has been named as an applicant. Any other Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. Applicants state that if a Money Market Fund offers more than one class of shares, each Investing Fund will invest only in the class with the lowest expense ratio (taking into account the expected impact of the Investing Fund's investment) at the time of the investment. In connection with approving any advisory contract for an Investing Fund, the Investing Fund's board of directors/trustees (the ''Board''), including a majority of the directors/trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Directors''), will consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for the reduced services provided to the Investing Fund by the Adviser as a result of the investment of Uninvested Cash in a Money Market Fund. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of a registered investment company or an affiliated person of such person acting as principal. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person directly or indirectly controlling, controlled by, or under common control with the other person; (b) any officer or director of such other person; and (c) if such other person is an investment company, any investment adviser thereof. Applicants state that each Fund within the same Fund Group may be deemed to be affiliated persons of one another by virtue of having a common board of directors or common investment advisers. In light of these possible affiliations, section 17(a) could prevent a Money Market Fund from selling shares to and redeeming shares from an Investing Fund.

5. Section 17(b) of the Act authorizes the Commission to grant an order exempting a transaction otherwise prohibited by section 17(a) if (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (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. Section 6(c) of the Act permits the Commission to exempt any person or transaction 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.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Funds by the Investing Funds satisfies the standards for relief under sections 6(c) and 17(b) of the Act. Applicants note that the shares of the Money Market Funds will be purchased and redeemed by the Investing Funds at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that a Money Market Fund has the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's Board determines that such sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Investing Fund (by purchasing shares of Money Market Funds), the Adviser for each Investing Fund (by managing the assets of the Investing Funds invested in Money Market Funds), and each Money Market Fund (by selling shares to Investing Funds) could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which participation by the registered investment company is on a basis different from, or less advantageous than, that of other participants. Applicants submit that the investment by the Investing Funds in shares of the Money Market Funds would be indistinguishable from any other shareholder account maintained by the Money Market Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

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

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), or if such shares are subject to any such fee, the Adviser for the Investing Fund will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees that are incurred by the Investing Fund.

2. Prior to reliance on the order, an Investing Fund will hold a meeting of the Board for the purpose of voting on the advisory contract under section 15 of the Act. The Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for an Investing Fund, the Board, including a majority of the Disinterested Directors, taking into account all relevant factors, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by such Fund's Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in one or more of the Money Market Funds. The minute books of the Investing Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, Money Market Funds only to the extent that the Investing Fund's aggregate investment in such Money Market Funds does not exceed 25 percent of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Money Market Funds will

be in accordance with each Investing Fund's respective investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund that may rely on the order may invest only in Money Market Funds within the same Fund Group as the Investing Fund.

6. So long as its shares are held by an Investing Fund no Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Arrangements, a majority of the Board, including a majority of the Disinterested Directors, will approve the Fund's participation in the Securities Lending Arrangements. Such Disinterested Directors also will evaluate the Securities Lending Arrangements and their results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Fund.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15356 Filed 6–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48027; File No. PCAOB–2003–01]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Bylaws and Amendment No. 1 Thereto

June 13, 2003.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'' or ''Act''),[1] notice is hereby given that on March 3, 2003, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule as described in Items I, II, and III below, which items have been prepared by the Board. On April 30, 2003, the PCAOB filed Amendment No. 1 to the proposed rule. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[1] 15 U.S.C. 7217(b).

I. Board's Statement of the Terms of Substance of the Proposed Rule

On January 9, 2003, the Board adopted its bylaws. On April 25, 2003, the Board adopted an amendment to Article VI of the bylaws to specify the powers of the Chair. In general, the bylaws implement Title I of the Sarbanes-Oxley Act by establishing a principal office in Washington, DC, and by establishing the composition of a Governing Board, and the powers and duties of the Governing Board and officers. The bylaws are intended by the Board to be effective as of their initial adoption by a unanimous vote of the Board members. The Board is therefore proposing that the Commission approve the bylaws effective as of January 9, 2003.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

The Sarbanes-Oxley Act established the Board as a nonprofit corporation, subject to and with all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, to oversee the audits of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors.

The Board's bylaws implement Title I of the Sarbanes-Oxley Act by establishing a principal office in Washington, DC, and by establishing the composition of a Governing Board, and the powers and duties of the Governing Board and officers. Among the provisions of the bylaws are rules for establishing a quorum and providing that an act approved by majority vote of the members of the Governing Board present at a meeting of the Board at which a quorum is present shall be an act of the Board. The bylaws also provide for including a recused Board member in the count for quorum purposes only in exigent circumstances, in which the Board is required to act within a limited period of time or in which the public interest or the protection of investors otherwise prevents the deferral of action until a quorum of non-recused members is available.

The Board's bylaws also provide that the Governing Board shall hold at least one public meeting each month, on the first Tuesday of the month (the ''Regular Public Meeting'') or at such other time as the Chair shall determine. The bylaws require the Board to adopt a written Open Meeting Policy defining the circumstances under which meetings of the Board will be open to the public and to include in that Open Meeting Policy procedures to ensure that the public is informed, at least five calendar days in advance, of the time, location, and general topics scheduled for discussion at each Regular Public Meeting. The bylaws also permit the Governing Board to hold additional meetings (''Special Meetings''), which may be public or non-public (in accordance with the Open Meeting Policy), as it deems necessary or appropriate to further the purposes of the Sarbanes-Oxley Act. The bylaws require that the Open Meeting Policy set forth procedures for providing the public with reasonable notice of public Special Meetings, and they permit the Governing Board to meet by telephone, provided that, in the case of a public meeting, at least one Board member is present at the location specified in the meeting notice.

The bylaws provide that the Chair shall also be the President and Chief Executive Officer of the Corporation and that the other Governing Board members shall also be Vice Presidents of the Corporation. Section 6.2 of the bylaws provides that the other officers of the Corporation shall include a Secretary, Treasurer, General Counsel, Chief Auditor, Chief Administrative Officer, Director of Inspections and Registration, Director of Investigations and Enforcement, and such other officers as the Governing Board may establish in accordance with such rules of the Board as may be adopted for establishing officers.

Section 6.3 of the bylaws provides that the Chief Executive Officer is responsible for, and has authority over, the management and administration of the Corporation, including: (i) Responsibility and authority for the appointment, dismissal, and supervision of personnel (other than Board members and personnel