

on October 8, 1999 (64 FR 54930), as amended on May 3, 2000 (65 FR 2575). The systems of records involved have routine uses permitting the disclosures needed to conduct this match.

The systems of records are protected under the Privacy Act of 1974, as amended, and in accordance with Internal Revenue Manual 1.16.8, Physical Security Standards Handbook. Either OPM or SSA may make onsite inspection or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

#### D. Privacy Safeguards and Security

Both SSA and OPM will safeguard information provided by the reciprocal agency as follows: Access to the records matched and to any records created by the match will be restricted to only those authorized employees and officials who need the records to perform their official duties in connection with the uses of the information authorized in the agreement. SSA and OPM will protect Federal Tax information in the same manner which IRS systems of records are protected under the Privacy Act of 1974, as amended, and in accordance with Internal Revenue Manual 1.16.8, Physical Security Standards Handbook. Either OPM or SSA may make onsite inspection or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

#### E. Disposal of Records

Records causing closeout or suspend actions would also be annotated and returned to OPM for record keeping purposes. All records returned to OPM are considered "response" records and any not used in the update process must be purged by SSA immediately after all processing is completed.

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## POSTAL RATE COMMISSION

[Docket No. MC2004-3; Order No. 1433]

### Negotiated Service Agreement

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and order concerning reconsideration and establishing procedures.

**SUMMARY:** This document informs the public that at the request of the United States Postal Service Governors, the Commission will reconsider its opinion and recommended decision approving a negotiated service agreement in docket number MC2004-3. The Postal Service

has been allowed until April 15, 2005, to submit arguments in favor of reconsideration. The dates for further procedural steps will be determined after the Postal Service submission has been reviewed.

**DATES:** The Postal Service's memorandum and proposal is due April 15, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, general counsel, at 202-789-6818.

#### SUPPLEMENTARY INFORMATION:

##### Procedural History

*Negotiated Service Agreement Proposed Rule*, 68 FR 52546 (September 4, 2003).

*Negotiated Service Agreement Final Rule*, 69 FR 7574 (September 4, 2003).

*Rate and Service Changes To Implement Functionally Equivalent Negotiated Service Agreement*, 69 FR 39520 (June 25, 2004).

On December 17, 2004, the Commission issued its Opinion and Recommended Decision Approving Negotiated Service Agreement in Docket No. MC2004-3 (Bank One Negotiated Service Agreement). On March 7, 2005, the Postal Service informed the Commission of the Governors' direction<sup>1</sup> for the Postal Service to initiate proceedings on reconsideration consistent with the Governors' decision.<sup>2</sup> The Postal Service also proposed procedures and requested leave to file a memorandum on reconsideration.

In the Governors' decision, the Governors conclude that the changes recommended by the Commission to give effect to the negotiated service agreement warrant implementation. However, the Governors disagree with the Commission's determination to place an overall limit on the discounts available to Bank One during the course of the agreement. The Governors ask the Commission to reconsider the recommendation of an overall limit (stop-loss cap) in light of the Governors' views and based on the existing record. The Governors do not ask the Commission to reopen the record to receive additional testimony, but do expect that the Commission will solicit comments from participants in this matter.

<sup>1</sup> Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Rate Commission Approving Negotiated Service Agreement with Bank One Corporation, Docket No. MC2004-3, February 16, 2005 (Governors' decision).

<sup>2</sup> United States Postal Service Motion for Leave to File Memorandum on Reconsideration and for Proposed Procedures, March 7, 2005.

If the Commission again recommends that the negotiated service agreement includes a stop-loss cap, the Governors request that the Commission clarify and explain further the comments in its Opinion and Recommended Decision, and in its separate Concurring Opinion, regarding the potential for uncapped negotiated service agreements that are functionally equivalent to the agreement with Capital One Services, Inc. approved in Docket No. MC2002-2.

The Governors also request that the Commission elaborate on the type and level of proof that the Commission might find persuasive in avoiding stop-loss caps in future baseline negotiated service agreement cases.

Finally, the Governors ask the Commission to discuss the role of settlement in uncontested cases involving functionally equivalent negotiated service agreements.

The Postal Service has proposed procedures to facilitate the Commission's reconsideration of its recommendations. The Postal Service proposes to present its views on the questions raised by the Governors in their decision in the form of a memorandum addressing the pertinent legal, economic, and practical issues. It also is prepared to propose an evidentiary approach that could serve as a standard for future negotiated service agreement proposals.

The Postal Service requests until April 15, 2005, to prepare its memorandum. It explains it needs this fairly lengthy period of time to prepare its submissions because it is simultaneously involved in preparation for the filing of an omnibus rate case. Participants as well as prospective negotiated agreement partners would then be allowed to comment on the Postal Service's views. The Postal Service suggests that the Commission next would address the Postal Service's and other participant's comments and proposals, and also would propose an approach to overcome its concerns that led to imposing a stop-loss cap in this case. Participants then would be allowed to comment on the Commission's views. Finally, the Commission would issue a further recommended decision including further explanations and guidance for future cases.

The Commission understands the need to promptly respond to the issues raised by the Governors upon reconsideration. Nonetheless, the Commission assumes that the Governors are aware of the multiple obligations of the Postal Service legal staff, and that if an omnibus rate case is filed this will impose heavy time pressure on

participants most likely to seek to present thoughtful suggestions on negotiated service agreement policies to the Commission.

As a first step, the Commission grants the Postal Service's motion to file a memorandum addressing the pertinent legal, economic, and practical issues in regard to the questions raised by the Governors in their decision. The Postal Service also may include a proposal for an evidentiary approach that could serve as a standard for future negotiated service agreement proposals. The Postal Service shall file this material by April 15, 2005.

As the Postal Service must accommodate the time pressures involved with preparing for an omnibus rate case, participants in this proceeding for reconsideration also will face time pressures once the omnibus rate case is filed. For this reason, until the scope of the Postal Service comments and proposals can be evaluated it is premature to map out a procedural schedule for issuing an Opinion and Further Recommended Decision in this case.

The Commission will review and evaluate the scope and potential impact of the initial material submitted by the Postal Service before determining an appropriate procedural path to bring this docket to a conclusion, with due consideration to the scheduling difficulties all parties and the Commission face when an omnibus rate case is pending. After the Commission determines an appropriate procedural path, a procedural schedule will be established.

This notice and order initiates the reconsideration of the Commission's Opinion and Recommended Decision Approving Negotiated Service Agreement in Docket No. MC2004-3. The Secretary shall arrange for its publication in the **Federal Register**.

#### Ordering Paragraphs

*It is ordered:*

1. The Commission will reconsider its Opinion and Recommended Decision Approving Negotiated Service Agreement in Docket No. MC2004-3 and issue a further recommended decision.

2. United States Postal Service Motion for Leave to File Memorandum on Reconsideration and for Proposed Procedures, March 7, 2005, is granted consistent with the text of this order. The Postal Service shall file its memorandum and proposal by April 15, 2005.

3. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

Issued: March 16, 2005.

By the Commission.

**Steven W. Williams,**  
*Secretary.*

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**BILLING CODE 7710-FW-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No.26784; 812-12948]**

### Burnham Investors Trust, et al., Notice of Application

March 15, 2005.

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

**ACTION:** Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("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:** The applicants request an order that would permit (a) certain registered management investment companies and certain entities that are excluded from the definition of investment company pursuant to section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act to invest uninvested cash and cash collateral in (i) affiliated money market funds and/or short-term bond funds or (ii) one or more affiliated entities that operate as cash management investment vehicles and that are excluded from the definition of investment company pursuant to section 3(c)(1) or 3(c)(7) of the Act, and (b) the registered investment companies and the affiliated entities to continue to engage in purchase and sale transactions involving portfolio securities in reliance on rule 17a-7 under the Act.

**APPLICANTS:** Burnham Investors Trust (the "Investment Company") and Burnham Asset Management Corporation (and any entity controlling, controlled by, or under common control with Burnham Asset Management Corporation, the "Adviser").

**FILING DATES:** The application was filed on March 27, 2003, and amended on March 14, 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 April 11, 2005, 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, 1325 Avenue of the Americas, 26th Floor, New York, NY, 10019.

**FOR FURTHER INFORMATION CONTACT:** Keith A. Gregory, Senior Counsel, at (202) 551-6815 or Mary Kay Frech, 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 at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

#### Applicants' Representations

1. The Investment Company is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. Each series of the Investment Company has separate investment objectives and policies. The Adviser currently serves as the investment adviser to the Investment Company. The Adviser is a Delaware corporation and is registered under the Investment Advisers Act of 1940.<sup>1</sup> Funds that are not money market funds and Non-Registered Funds (the "Participating Funds") have or may be expected to have cash that has not been invested in portfolio securities ("Uninvested Cash"). Uninvested Cash may result

<sup>1</sup> Applicants request that any relief granted also apply to (a) any other registered management investment company and series thereof for which the Adviser currently is, or in the future may act as, investment adviser (together with all existing and future series of the Investment Company, the "Funds") and (b) any entity excluded from the definition of investment company pursuant to section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act, for which the Adviser currently is, or in the future may act as, investment adviser or trustee exercising investment discretion ("Non-Registered Funds"). All entities that currently intend to reply on the order have been named as applicants. Any other existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions of the application.