Applicants state that the proposed sale by the Trust of a portion of its assets to the Healthcare Trust in exchange for the securities of the Healthcare Trust will be based on the fair value of those assets computed on the day of the proposed transfer in the same manner as for purposes of the daily net asset valuation for the Trust. Applicants further state that such assets are anticipated to consist largely or exclusively of cash and short-term fixed income instruments and thus will likely pose few, if any, issues with respect to valuation. The Healthcare Trust shares distributed by the Trust in the Transaction will be valued based on the value of the Healthcare Trust's assets. ''Value'' for those purposes will be determined in accordance with the provisions of section 2(a)(41) of the Act and rule 2a–4 under the Act.

4. With respect to the Transaction, each of the Trust's Board and the Healthcare Trust's Board, including a majority of the Disinterested Directors of each Board, determined that the participation in the Transaction is in the best interests of the Trust or the Healthcare Trust, as applicable, and that the interests of the existing shareholders of the Trust or the Healthcare Trust, as applicable, will not be diluted as a result of the Transaction. These findings, and the basis upon which the findings were made, will be recorded fully in the minute book of the Trust or the Healthcare Trust, as applicable.

5. Applicants state that the Transaction will be consistent with the stated investment policies of the Trust and the Healthcare Trust as disclosed to shareholders. The distribution of the Healthcare Trust shares will not initially change the position of the Trust's shareholders with respect to the underlying investments that they then own. A proxy statement/prospectus of the Trust and the Healthcare Trust is being used to solicit the approval of the Trust's shareholders of the Transaction at a vote to take place following the issuance of the exemptive order. The Trust's shareholders will have the opportunity to vote on the Transaction after having received disclosure concerning the Transaction.

6. Applicants also seek an order under section 17(d) of the Act and rule 17d–1 under the Act. Section 17(d) and rule 17d–1 prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the Commission. In passing on applications for these orders, rule 17d–1 provides that the Commission will consider whether the participation of the investment company is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of the other participants. Applicants request an order pursuant to rule 17d–1 to the extent that the participation of the applicants in the Transaction may be deemed to constitute a prohibited joint transaction.

7. Applicants state that the Transaction will not place any of the Trust, the Healthcare Trust, or existing shareholders of the Trust in a position less advantageous than that of any other person. As noted, the value of the Trust's assets transferred to the Healthcare Trust (and the common shares received in return) will be based on their fair value as computed on the day of the transfer in accordance with the requirements of the Act. The shares of the Healthcare Trust will be distributed as a dividend to the shareholders, leaving the shareholders in the same investment posture immediately following the Transaction as before, subject only to changes in market price of the underlying assets subsequent to the Transaction.

8. Applicants assert that the Transaction has been proposed in order to benefit the shareholders of the Trust as well as the Healthcare Trust, and neither Gabelli nor any other affiliated person of the Trust or the Healthcare Trust will receive fees solely as a result of the Transaction. The fee indirectly payable to Gabelli by the Healthcare Trust's shareholders will be the same as the fee currently indirectly payable to Gabelli by the Trust's shareholders. In addition, by creating the Healthcare Trust through the Transaction, the Trust is effectively enabling its shareholders to receive securities without the costs associated with a public offering.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8504 Filed 5–3–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27807; 812–13286]

Old Westbury Funds, Inc. and Bessemer Investment Management LLC; Notice of Application

April 27, 2007.

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

ACTION: Notice of application for an order 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, as well as from certain disclosure requirements.

APPLICANTS: Old Westbury Funds, Inc. (the ''Corporation'') and Bessemer Investment Management LLC (the ''Adviser'').

FILING DATES: The application was filed on April 24, 2006, and amended on April 26, 2007.

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 May 22, 2007, 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, U.S. Securities & Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Robert M. Kurucza, Morrison & Foerster LLP, 2000 Pennsylvania Avenue, NW., Suite 5500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Julia Kim Gilmer, 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, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Corporation, a Maryland corporation, is registered under the Act as an open-end management investment company. The Corporation currently is comprised of seven series (each a ''Fund'' and collectively, the ''Funds''), each with separate investment

objectives, policies and restrictions.[1] The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each of the Funds pursuant to an investment advisory agreement (''Advisory Agreement'') with the Corporation. The Advisory Agreement has been approved by the Corporation's board of directors (the ''Board''), including a majority of the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Corporation or the Adviser (''Independent Directors''), as well as by the shareholders of each Fund.

2. Under the terms of the Advisory Agreement, the Adviser provides investment advisory services to each Fund, supervises the investment program for each Fund, and has the authority, subject to Board approval, to enter into investment subadvisory agreements (''Subadvisory Agreements'') with one or more subadvisers (''Subadvisers''). Each Subadviser is registered under the Advisers Act. The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, retention or termination. Subadvisers recommended to the Board by the Adviser are selected and approved by the Board, including a majority of the Independent Directors. Each Subadviser has discretionary authority to invest the assets or a portion of the assets of a particular Fund. The Adviser compensates each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

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

[1] Applicants also request relief with respect to future series of the Corporation and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser, (b) uses the management structure described in the application; and (c) complies with the terms and conditions of the 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. All references to the term ''Adviser'' include: (a) the Adviser, and (b) any entity controlling, controlled by, or under common control with the Adviser. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser will precede the name of the Subadviser.

4. Applicants also request an exemption from the various disclosure provisions described below that may require a Fund to disclose fees paid by the Adviser to each Subadviser. An exemption is requested to permit the Corporation to disclose for each Fund (as both a dollar amount and as a percentage of each Fund's net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Subadvisers; and (b) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers (collectively ''Aggregate Fee Disclosure''). For any Fund that employs an Affiliated Subadviser, the Fund will provide separate disclosure of any fees paid to the 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 under 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. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. 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 provisions of the Act, or from any rule thereunder, 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. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders are relying on the Adviser's experience to select the Subadviser best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement 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 note that the Advisory Agreement and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that some Subadvisers use a ''posted'' rate schedule to set their fees. Applicants state that while Subadvisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will benefit Fund shareholders because it would improve the Adviser's ability to negotiate the fees paid to the Subadvisers.

Applicants' 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 purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

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

3. Within 90 days of the hiring of a new Subadviser, the affected Fund shareholders will be furnished all the information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Subadviser. To meet this obligation, the Fund will provide shareholders within 90 days of the hiring of a new Subadviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

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

5. At all times, at least a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be placed within the discretion of the then-existing Independent Directors.

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 the 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. The Adviser will provide general management 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 of the Board, will: (a) Set each Fund's overall investment strategies, (b) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets, (c) allocate and, when appropriate, reallocate a Fund's assets among multiple Subadvisers; (d) monitor and evaluate the performance of the Subadvisers, and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each relevant Fund's investment objective, policies and restrictions.

8. No director or officer of the Funds or 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: (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a 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. The Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability on a per-Fund basis. Such information will reflect the impact on the profitability of the hiring or termination of any Subadviser during the applicable quarter.

10. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

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

12. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

13. Independent legal counsel, as defined in rule 0–1(a)(6) under the 1940 Act, will be engaged to represent the Independent Directors. The selection of such counsel will be within the discretion of the then existing Independent Directors.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8506 Filed 5–3–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55676; File No. SR–CBOE–2007–40]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Duration of CBOE Rule 6.45A(b) Pertaining to Orders Represented in Open Outcry

April 27, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the CBOE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend the duration of CBOE Rule 6.45A(b) (the ''Rule''), relating to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System (''Hybrid'') through July 31, 2007. No other changes are being made to the Rule. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and (*http://www.cboe.org/Legal*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). *See* discussion *infra* Section III.