

proposed action (*i.e.*, the “no-action” alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources: The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement related to operation of Salem Nuclear Generating Station, Unit Nos. 1 and 2, dated April 1973.

Agencies and Persons Consulted: On June 10, 2003, the staff consulted with the New Jersey State official, Mr. Rich Pinney of the New Jersey Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee’s letter dated April 10, 2003. Documents may be examined, and/or copied for a fee, at the NRC’s Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC’s PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 30th day of June, 2003.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Acting Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–21882 Filed 8–26–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08976]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Source Material License No. SMB–1527, Viacom, Incorporated, Bloomfield, New Jersey

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Viacom, Incorporated (Viacom) for Source Material License No. SMB–1527, to authorize release of the former lamp manufacturing plant located at One Westinghouse Plaza, Bloomfield, New Jersey for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. Environmental Assessment

The purpose of the proposed action is to allow for the release of the licensee’s Bloomfield, New Jersey facility for unrestricted use. Viacom, Incorporated in Bloomfield, New Jersey (formerly Westinghouse Electric Corporation and CBS Corporation) was authorized by NRC since February 3, 1989, to possess radioactive materials for decommissioning purposes at the site. On August 21, 2002, Viacom requested that NRC release the Bloomfield, New Jersey facility for unrestricted use. Viacom has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Viacom’s request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are not expected to be significant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC’s Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> (ADAMS Accession No. ML032250208). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Any questions with respect to this action should be referred to Mark C. Roberts, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5094, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 13th day of August, 2003.

For The Nuclear Regulatory Commission.

Francis Costello,

Deputy Division Director, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–21883 Filed 8–26–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Number IC–26166; 812–12997]

Fidelity Commonwealth Trust, et al.; Notice of Application

August 22, 2003.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of an open-end management investment company, whose portfolios will consist of the component securities of certain equity securities indexes, to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices on The Nasdaq Stock Market (“Nasdaq”) or a national securities exchange (each, a “Listing Market”); (c) dealers to sell shares of the series to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933

(the "Securities Act"); and (d) affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares.

Applicants: Fidelity Commonwealth Trust ("Trust"), Fidelity Distributors Corporation ("Distributor"), and Fidelity Management & Research Company ("Advisor").

Filing Dates: The application was filed on August 4, 2003, and amended on August 22, 2003.

Hearing or Notification of Hearing: An order granting the requested relief 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 September 11, 2003, 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, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, 82 Devonshire Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 942-0611, or Michael W. Mundt, Senior Special Counsel, 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 (tel. 202-942-8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Massachusetts business trust. The Trust intends to create a new, non-diversified series that will operate pursuant to the terms and conditions of the application (the "Initial Fund" and together with the "Future Funds," as defined below, the "Funds"). The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will

serve as the investment adviser to the Funds. The Advisor may, in the future, enter into subadvisory agreements with additional investment advisers to act as subadvisers with respect to particular Funds. Any subadviser will be registered under the Advisers Act. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and will be the principal underwriter and distributor of the shares of the Funds ("Shares").

2. Each Fund will invest in a portfolio of equity securities generally consisting of the component securities of a specified equity securities index (an "Underlying Index").¹ The Initial Fund will be based on the NASDAQ Composite Index. Applicants request that the order also apply to any additional series of the Trust, or any series of any other existing or future investment company registered under the Act, that will (a) be based on an Underlying Index and operate pursuant to the terms and conditions of the application and (b) be advised by the Advisor or an entity controlled by or under common control with the Advisor (each, a "Future Fund"). No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Advisor, a subadviser or promoter of a Fund, or the Distributor.

3. The investment objective of each Fund will be to provide investment results that closely correspond to the price and yield performance of its Underlying Index. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout regular trading hours on the Listing Market. A Fund will utilize either a replication strategy or a representative sampling strategy to track its Underlying Index. A Fund using a replication strategy generally will invest in substantially all of the component securities of its Underlying Index in the same approximate proportions as in the Underlying Index. When a component security is illiquid or when there are practical difficulties or substantial costs

¹ As a general matter, at least 90% of each Fund's total assets (exclusive of collateral held from securities lending will be invested in the component securities of its Underlying Index. Each Fund may also invest up to 10% of its total assets in stocks that are not included in the Underlying Index, futures contracts, options on futures contracts, options and swaps, and cash and cash equivalents. Under certain unusual circumstances, such as to manage changes in its Underlying Index, a Fund may have between 80% and 90% of its total assets invested in the component securities of its Underlying Index for a short period of time.

involved in holding every security in an Underlying Index, a Fund may use a representative sampling strategy where it holds a representative sample of the component securities of the Underlying Index and will invest in some but not all of the component securities of its Underlying Index.² Applicants anticipate that a Fund using the representative sampling technique will not track its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every component security of the Underlying Index with the same weighting as the Underlying Index. Applicants anticipate that the expected tracking error of a Fund using the representative sampling technique will not exceed 5%, net of fees or expenses.

4. Shares will be issued in aggregations of at least 50,000 or more ("Creation Units"). The price of a Creation Unit will range from \$5,000,000 to \$7,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a Depository Trust Company ("DTC") participant that has executed a participation agreement with the Distributor. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. A Fund also may sell Creation Units on a "cash only" basis in limited circumstances. A person purchasing a Creation Unit from a Fund must make a "Creation Deposit" consisting of: (a) securities selected by the Advisor ("Deposit Securities"), and (b) a cash payment equal to the difference between the market value of the Deposit Securities and the net asset value ("NAV") of a Creation Unit ("Cash Amount").³ An investor purchasing or

² Securities selected for inclusion in a Fund by the Advisor will have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Underlying Index taken in its entirety.

³ On each day that the Listing Market is open for business ("Business Day"), the Advisor or subadviser will make available through the National Securities Clearing Corporation ("NSCC"), prior to the opening of trading on the Listing Market, the list of the names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund as well as information regarding the Cash Amount. That Creation Deposit will apply to all purchases of Creation Units until a new Creation Deposit composition is announced. A purchasing investor may be permitted or required to substitute an amount of cash or a different security for a Deposit Security in certain circumstances. The Listing Market will disseminate every 15 seconds throughout the regular trading hours of the Listing Market, an amount representing on a per Share basis the sum of the current value of the deposit Securities and the estimated Cash Amount.

redeeming Creation Units from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from costs incurred by the Fund in connection with the purchase and redemption of the Creation Units.⁴ Each Fund will provide complete disclosure about the Transaction Fee in its prospectus, including the maximum amount of the Transaction Fee, and the method of calculating the Transaction Fee will be disclosed in the Trust's statement of additional information ("SAI").

5. Orders to purchase Creation Units must be placed with the Distributor who will be responsible for transmitting the orders to the relevant Fund. The Distributor will maintain a record of Creation Unit purchases and send out confirmations to purchasers. The Distributor will also furnish a copy of the Fund's prospectus to those placing purchase orders.

6. Persons purchasing Creation Units from a Fund may hold the Shares or sell some or all of them in the secondary market. Shares of the Funds will be listed on a Listing Market, which will either be Nasdaq or a national securities exchange as defined in section 2(a)(26) of the Act, and traded in the secondary market in the same manner as other equity securities. It is expected that one or more member firms of the Listing Market will act as a market maker or specialist ("Market Maker") and maintain a market on the Listing Market for the Shares.⁵ The price of Shares traded on a Listing Market will be based on a current bid/offer market. Each Share is expected to have a market value of between \$50 and \$70. Purchases and sales of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. A Market Maker, in providing for a fair and orderly secondary market for Shares, also may purchase Creation Units in connection with its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional

and retail investors.⁶ Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at NAV, will ensure that the market price of Shares will not vary much from its NAV.

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Units from a Fund. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit in most cases will receive a portfolio of securities ("Redemption Securities") plus a balancing cash amount representing the difference between the NAV of a Creation Unit and the market value of the Redemption Securities. As with purchases, a redeeming investor will pay a Transaction Fee. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as if the investor is unable, by law or policy, to own a particular Redemption Security.

9. Applicants state that neither the Trust nor any Fund will be advertised, marketed, or otherwise held out as a traditional open-end investment company or mutual fund. Rather, applicants state that each Fund and the Trust will be marketed as a "Nasdaq-traded fund," "exchange-traded fund," "investment company," "fund," and "trust" without reference to an "open-end fund" or "mutual fund," except to compare and contrast the Trust and the Funds with conventional open-end investment companies. All marketing materials that describe the features or method of obtaining, buying, or selling Creation Units or Shares will prominently disclose that Shares are not individually redeemable and that Shares may be acquired or redeemed from the Fund in Creation Units only. The same type of disclosure will be provided in each Fund's prospectus, SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Trust will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

10. Applicants note that the Trust will have series that operate as "traditional" mutual funds that do not rely on the requested relief. To ensure that investors clearly understand the differences between these series and the Funds, applicants agree to a number of

disclosure measures detailed in the application, including that the Funds will have separate prospectuses than any other series of the Trust.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that 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.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, the market price of Shares will not vary much from its NAV.

Section 22(d) of the Act and Rule 22c-1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market

⁴ Where a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed a higher Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities.

⁵ The listing requirements established by Nasdaq require that at least two market makers be registered in Shares in order for the Shares to maintain a listing on Nasdaq. Registered market makers must make a continuous two-sided market in a listing or face regulatory sanctions.

⁶ Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. DTC or its participants will maintain records reflecting the beneficial owners of Shares.

trading in Shares will take place at negotiated prices, not at an offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state (a) that secondary market trading in Shares will not cause dilution for owners of Shares because such transactions do not directly involve Fund assets, and (b) to the extent different prices exist during a given trading day, or from day to day, these variances occur as a result of third-party market forces such as supply and demand and not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces in the marketplace will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit

dealers selling Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.⁷

8. Applicants state that Shares will be listed on a Listing Market and will be traded in a manner similar to other equity securities. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

9. Applicants contend that Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Shares will be listed on a Listing Market, prospective investors will have access to several types of market information about Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information for Shares also will be published daily in the financial section of newspapers. In addition, the Fund (or the Listing Market) also intends to maintain a Web site that includes quantitative information updated on a daily basis, including, for each Fund, daily trading volume, the closing NAV and the reported closing price. The Web site for the Fund will also include, for each Fund, on a per Share basis, (a) a calculation of the premium or discount of the closing price against NAV, and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against NAV, within appropriate ranges,

⁷ Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, such as purchases of shares from the Fund or an underwriter. Applicants state that a Fund's prospectus will caution persons purchasing Creation Units that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Units from a Fund, breaks them down into the constituent Shares, and sells those Shares directly to customers, or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. Each Fund's prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. Each Fund's prospectus also will caution dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

for each of the four previous calendar quarters.

10. Investors also will receive a product description ("Product Description") describing a Fund and its Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about Shares that is tailored to meet the needs of investors purchasing Shares in the secondary market.

Sections 17(a)(1) and (2) of the Act

11. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit persons that are affiliated persons of a Fund or the Trust solely by virtue of (a) a 5% or more, or in excess of a 25%, ownership interest of Shares (and affiliated persons of such affiliated persons that are not otherwise affiliated with such Fund or Trust), or (b) a 5% or more, or in excess of 25%, ownership interest in a Fund or other registered investment company (or series) advised by the Advisor, to purchase and redeem Creation Units through in-kind transactions with the Fund.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of a Fund or the Trust described above from purchasing or redeeming Creation Units through in-kind transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for

all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as the securities in the Fund's portfolio. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for an affiliated person described above to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds or Trust.

Applicants' Conditions

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

1. Applicants will not register a Future Fund, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission; or (b) the Future Fund will be listed on a Listing Market without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

2. Each Fund's prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as the Trust operates in reliance on the requested order, the Shares will be listed on a Listing Market.

4. Neither the Trust (with respect to any Fund) nor any of the Funds will be advertised or marketed as an open-end fund or a mutual fund. Each Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

5. The Web site for each Fund, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) the prior Business Day's NAV and the

reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the Web site for the Fund has information about the premiums and discounts at which the Fund's Shares have traded.

6. The prospectus and annual report for each Fund will also include: (a) the information listed in condition 5(b), (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

7. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, a Listing Market rule requiring Listing Market members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03-21937 Filed 8-26-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26164; 812-13001]

Merrill Lynch Principal Protected Trust, et al.; Notice of Application

August 20, 2003.

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

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(3) 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.

APPLICANTS: Merrill Lynch Principal Protected Trust (the "Trust"), Merrill Lynch Investment Managers, L.P. ("MLIM"), and Fund Asset Management, L.P. ("FAM," and together with MLIM, the "Advisers").

SUMMARY OF APPLICATION: Applicants request an order to permit any existing and future series of the Trust, any existing and future registered investment company or series that has as its investment adviser an Adviser or other registered investment adviser that is in the control of, controlled by, or under common control with an Adviser (collectively with the Trust and its present and future series, the "Funds") to enter into an arrangement with any entity that now or in the future is in control of, controlled by, or under common control with, an Adviser (a "Merrill Lynch Affiliate") to provide principal protection to the Fund ("Principal Protection"), or to serve as a hedging counterparty ("Hedging Counterparty") where an unaffiliated third party providing Principal Protection to the Fund seeks to enter into a derivatives contract or reinsurance contract with a Merrill Lynch Affiliate to hedge all or a portion of the risks under the Principal Protection arrangement.¹

FILING DATES: The application was filed on August 13, 2003.

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 September 15, 2003, 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: Andrew J. Donohue, Esq., Merrill Lynch Investment Managers, L.P., P.O. Box

¹ All existing entities currently intending to rely on the requested order have been named as applicants. Any other existing and future entity that relies on the order will comply with the terms and conditions of the application.