distributions, and compliance with fundamental policies.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29714 Filed 11–20–96; 8:45 am]

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[Investment Advisers Act Release No. 1597; 803–100]

BlackRock Financial Management, Inc.; Notice of Application

November 15, 1996.

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

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (the ''Act'').

APPLICANT: BlackRock Financial Management, Inc.

RELEVANT ACT SECTIONS: Order requested under section 206A for an exemption from section 205(a)(1).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to charge a performance fee to BlackRock Assets Investors (the ''Trust''), a closed-end investment company. Applicant requests the order because a limited number of its senior employees or senior employees of a Trust subsidiary who do not meet the minimum financial standards prescribed by rule 205–3(b)(1) under the Act may become shareholders of one of the Trust's feeder funds.

FILING DATES: The application was filed on November 28, 1995, and amended and fully restated applications were filed on April 26 and October 3, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1996, and should be accompanied by proof of service on applicant, 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 reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 345 Park Avenue, New York, N.Y. 10154.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an investment adviser registered under the Act. The Trust and BlackRock Fund Investors I, II and III (the ''Funds'') are each closed-end, non-diversified management investment companies formed as Delaware business trusts and registered under the Investment Company Act of 1940. The Trust and the Funds are organized in a master-feeder structure. Each Fund invests all of its assets in the Trust, which conducts all investment operations.

2. The Funds have conducted an offering of interests exempt from registration under the Securities Act of 1933 pursuant to the exemption provided by section 4(2) thereof. At the conclusion of this private offering in the spring of 1995, the Funds had obtained capital commitments for approximately $560 million from institutional and higher net worth investors and in turn entered into back-to-back commitments with the Trust.[1] The Funds have drawn approximately $130 million in committed capital and have invested that amount in the Trust.

3. Applicant formed the Trust and the Funds to provide institutional investors with a way to participate in real estate debt markets. The primary investment objective of the Trust is to earn a high total rate of return through investment in a portfolio consisting primarily of subordinate commercial mortgage-backed securities (''CMBS'') and from its equity investments in mortgage affiliates engaged in acquiring, working out, pooling and repackaging real estate debt and issuing CMBS. The Trust and the Funds are scheduled to terminate on January 17, 2002.

4. The Trust owns BlackRock Capital Finance L.P. (''BCF''), which was formed to acquire performing and distressed commercial and residential loans and work out its distressed investments and pool and repackage its performing mortgage loans as mortgage-backed securities or otherwise dispose of loans and related properties. Most of the Trust's approximately $130 million in capital has been invested in BCF.

5. Under an investment advisory agreement between the Trust and applicant, the Trust will pay to applicant both a semi-annual management fee equal to .75% per year of the capital commitments (during the three-year commitment period ending in 1998) or average capital invested (after the commitment period) and a performance fee (the ''Performance Fee''). The Performance Fee is payable as of the first anniversary of the commencement of the Trust's operations, as of each October 31 thereafter and as of the Trust's termination date.

6. The Performance Fee was extensively negotiated between applicant and three ''lead investors,'' large institutional investors in Funds II and III whose commitment represents almost 48% of the capital commitments of all the Funds. The Performance Fee was designed both to require that the Trust achieve at least a 10% annualized total return before applicant is entitled to any Performance Fee and then to further delay its entitlement to such fees until the investors have received distributions at least equal to the amount of capital invested in the Trust.

7. The maximum Performance Fee is 20% of realized total return net of any unrealized losses plus an interest factor related to the delayed payment feature discussed above. In order to ''catch up'' after the 10% minimum annualized return is achieved, the stated rate of the Performance Fee is 40% on the total return between 10% and 20% per year and then reverts to the 20% rate for all incremental returns once the average annual performance has reached 20%.

Applicant's Legal Analysis

1. Section 205(a)(1) of the Act prohibits an investment adviser from performing under an investment advisory contract that provides for compensation to the adviser based on a share of capital gains upon or capital appreciation of a client's funds. Section 206A authorizes the SEC to exempt any person from any provision of the Act to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes of the Act.

2. Rule 205–3 under the Act allows a registered adviser to charge a fee based upon a share of capital gains or capital appreciation of a client's account under certain conditions. Paragraph (b)(1) of the rule requires that the client must

[1] Investors in the Funds signed subscription agreements restricting the transferability of their shares of investors who do not meet the objective financial standards set forth in rule 205–3 (b)(1) under the Act. Moreover, consent by the applicable Fund is required for any transfer other than among affiliates.

have either a minimum account size of $500,000 or a net worth over $1 million.

3. Although the Performance Fee is assessed against the Trust (rather than directly against investors in the Funds), paragraph (b)(2) of the rule requires in effect that each investor in each of the Funds must meet the objective financial test of $500,000 under management or $1,000,000 in net worth set forth in paragraph (b)(1). Applicant represents that, except for the objective financial qualifications established by rule 205–3, all the other requirements of rule 205–3 are satisfied.[2]

4. Individuals who do not have $1,000,000 in net worth and who are employees either of applicant or of BCF seek to invest in Fund III in amounts less than $500,000. These individuals do not satisfy the objective financial test set out in rule 205–3(b)(1). Consequently, rule 205–3 does not permit, and section 205(a)(1) would prohibit, applicant from charging the Performance Fee to the Trust if such individuals invest in Fund III. Applicant requests that the SEC allow it to charge the Performance Fee to all investors, including the non-qualifying employees of applicant and BCF.

5. Applicant represents that each of the individuals in question has a college degree or graduate school training and years of experience in the mortgage securities investment business and is closely involved in the daily business of applicant or BCF. In addition, such non-qualifying personnel all hold positions of vice-president and above (including principal and managing director). Accordingly, each of these individuals has a professional understanding of the risk associated with the Trust's investment program as well as the degree of risk being undertaken by applicant in achieving the program.

6. Applicant argues that the financial sophistication of the non-qualifying employees is exactly what the SEC sought to assure by imposing the exemptive conditions of rule 205–3. In the adopting release, the SEC stated that the objective financial criteria set forth in rule 205–3 are intended to assure that the rule will be limited to advisory contracts with clients who are financially sophisticated and capable of bearing the increased risks associated with incentive fee arrangements.[3] In addition, applicant states that it will make a good faith judgment as to the sophisticated nature of each investor relative to the affairs of the Trust.

7. Applicant further states that each of the individual employees who does not qualify under rule 205–3(b)(1) is an ''accredited investor,'' as such term is defined in rule 501 of Regulation D under the Securities Act of 1933.[4] Each such employee who chooses to invest in Fund III also would execute a binding subscription agreement committing to invest between $25,000 and $100,000.

8. Substantially all of applicant's most senior personnel who do qualify under rule 205–3(b)(1) have committed up to $28 million for Fund III and also share in applicant's profits through incentive compensation plans. Applicant believes that the fact that they have substantial amounts at stake moderates any incentive to take the kinds of investment risks that concerned Congress when it adopted section 205(a)(1) and tends to ensure a community of interest with all other investors, including the proposed non-qualifying investors.

9. Applicant believes that there is also a strong commonality of interest between the qualifying personnel and non-qualifying employees who may wish to invest in Fund III, because the two groups work closely together in conducting the business of the Trust or BCF. The non-qualifying employees are, for example, actively involved in meeting with prospective sellers and buyers of real estate debt, structuring potential transactions, and preparing financial statements and reports to investors. These functions all require a high degree of financial sophistication. As members of the term who expect to make the Trust successful, they would like to be able to participate in that success along with the more senior personnel through an equity investment.

10. Applicant believes that the terms of the Performance Fee eliminate the ability—and any incentive—for applicant to engage in speculative trading practices or artificially enhance its fee by loading profits into one year and losses into another year. The Performance Fee takes into account both realized and unrealized losses, but only realized gains. In addition, it is measured only against cumulative performance over the life of the Trust and is payable only after a cumulative minimum return to investors has been achieved. Further, its accrual and payment are further delayed to minimize the possibility that Performance Fees paid for good performance in the early years could not be recovered by the Trust in later years if performance fell. Applicant also notes that investors in the Funds will receive annual and semi-annual reports with attached financial statements regarding the Funds, the Trust and the Trust's ''downstream affiliates'' as well as tax information regarding those entities, including BCF.

Applicant's Conditions

Applicant agrees that any order granting the requested exemptive relief may be made subject to the following conditions.

1. Applicant's investment advisory arrangement with the Trust will satisfy all the conditions of rule 205–3 of the Act, except for the objective financial standards set forth in paragraph (b)(1) thereof as they apply to the ''non-qualifying'' employees of applicant or BCF.

2. Applicant will use its best efforts to ensure that no shares of any of the Funds or any interests therein are transferred to any person that does not satisfy the applicable objective financial standards of rule 205–3(b)(1).

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

Margaret H. McFarland,

Deputy Secretary.

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[2] Rule 205–3 requires, first, that the adviser's compensation must be based upon a formula that includes realized capital losses, and under certain conditions, unrealized capital depreciation. Second, the compensation must be based upon performance over a period of not less than one year. Third, the adviser must disclose certain information to the client. Finally, the adviser must reasonably believe that the advisory contract represents an arm's-length arrangement and that the client understands the performance fee and its risks.

[3] *See* Investment Advisers Act Release No. 996 (Nov. 14, 1985) (adopting rule 205–3).

[4] Rule 501 of Regulation D defines an accredited investor to include, as here relevant, any natural person having an income of greater than $200,000 for each of the previous two years and an expectation of the same income level for the current year.

[Rel. No. IC—22335; 813–158]

Elfun Trust, et al.; Notice of Application

November 14, 1996.

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

ACTION: Notice of Application for Amendment of Prior Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Elfun Trusts, Elfun Tax-Exempt Income Fund, Elfun Income Fund, Elfun Global Fund, Elfun Diversified Fund, Elfun Money Market Fund, General Electric S&S Program Mutual Fund, and General Electric S&S Long Term Interest Fund (collectively, ''Fund'').

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(b) of the Act for an exemption from section 2(a)(13) of