

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23107; 812-11086]

DG Investor Series, et al.; Notice of Application

April 9, 1998.

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

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of new advisory ("New Management Agreement") and sub-advisory agreements ("New Sub-Advisory Agreements") (collectively, the "New Agreements") for a period of up to 120 days following the date of a change in control of ParkSouth Corporation (the "Adviser") (but in no event later than September 30, 1998) (the "Interim Period"). The order also would permit the Adviser and Subadvisers to receive all fees earned under the New Agreements during the Interim Period following shareholder approval.

APPLICANTS: Adviser, Womack Asset Management ("Womack"), Bennett Lawrence Management, LLC ("Bennett"), Lazard Asset Management, a division of Lazard Freres & Co. LLC ("Lazard"), and DG Investor Series (the "Trust").

FILING DATE: The application was filed on April 9, 1998.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 29, 1998, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Trust, Adviser, Womack, Bennett, and Lazard, c/o Timothy S. Johnson, Esq., Federated Investors, 5800 Corporate Drive, Pittsburgh, Pennsylvania 15237-7010.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942-0569, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202-942-8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. The Trust currently offers nine series: DG Equity Fund, DG Opportunity Fund ("Opportunity Fund"), DG Mid Cap Fund ("Mid Cap Fund"), DG International Equity Fund ("International Equity Fund"), DG Limited Term Government Income Fund, DG Government Income Fund, DG Municipal Income Fund, DG Prime Money Market Fund, and DG Treasury Money Market Fund (each a "Portfolio"). The assets of the Trust are managed by the Adviser pursuant to an investment management contract between the Adviser and the Trust on behalf of each Portfolio (the "Existing Management Agreement"). Womack provides investment advisory services to the Opportunity Fund pursuant to a separate agreement with the Adviser. Bennett provides investment advisory services to the Mid Cap Fund pursuant to a separate agreement with the Adviser. Lazard provides investment advisory services to the International Equity Fund pursuant to a separate agreement with the Adviser (collectively the existing Womack, Bennett and Lazard sub-advisory agreements are the "Existing Sub-Advisory Agreements"). The Adviser, Womack, Bennett, and Lazard are investment advisers registered under the Investment Advisers Act of 1940.

2. On December 7, 1997, Deposit Guaranty Corporation ("DGC"), corporate parent of the Adviser, and First American Corporation ("First American") entered into an agreement and plan of merger, whereby DGC will be merged with and into First American, a bank holding company (the "Transaction"). As a result of the Transaction, the Adviser will become a wholly-owned subsidiary of First American. Applicants expect consummation of the Transaction on April 30, 1998.

3. Applicants believe that the Transaction will result in an assignment of the Existing Management Agreement

and could be deemed to result in an assignment of the Existing Sub-Advisory Agreements (together, the Existing Management Agreement and Existing Sub-Advisory Agreements are the "Existing Agreements"). Applicants request an exemption to permit (i) the implementation, during the Interim Period, prior to obtaining shareholder approval, of the applicable New Agreements, and (ii) the Adviser and Subadvisers to receive from each Portfolio all fees earned under the New Agreement during the Interim Period, as applicable, if, and to the extent, the New Management Agreement and applicable New Sub-Advisory Agreement are approved by the shareholders of each Portfolio. The requested exemption would cover the Interim Period beginning on the date the Transaction is consummated and continuing through the earlier of 120 days or the date on which the applicable New Agreements are approved or disapproved by the shareholders of each relevant Portfolio, but in no event later than September 30, 1998. Applicants state that the New Agreements will be identical in substance to the respective Existing Agreements.

4. On February 26, 1998, the Trust's board of trustees, including a majority of members who are not "interested persons" of the Trust, as that term is defined in section 2(a)(19) of the Act (the "Independent Trustees") (the "Board"), held in-person meetings to evaluate whether the terms of the New Agreements are in the best interests of the relevant Portfolios and their shareholders and to approve the New Agreements.¹ Applicants expect shareholders of each of the Portfolios to meet on or about July 15, 1998 (the "Meetings"). Applicants expect that proxy materials for the Meetings will be mailed on or about May 15, 1998.

5. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to the Adviser and Subadvisers during the Interim Period under the New Agreements will be paid into an interest-bearing escrow account maintained by the escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (a) To the Adviser and applicable Subadviser only upon

¹ The Board considered, among other things, that subsequent to the Transaction, the Adviser personnel serving the Portfolios would do so from a department of First American National Bank, a subsidiary of First American. Since it was subsequently determined that the Adviser will remain a separately organized operating subsidiary of First American and will serve the Portfolios as such, the Board will meet on or about May 12, 1998 to reaffirm its findings and approvals.

approval of the relevant New Agreement(s) by the shareholders of the relevant Portfolio; or (b) to the appropriate Portfolio if the Interim Period has ended and its relevant New Agreement(s) have not received the requisite shareholder approval. Before any such release is made, the Independent Trustees of the Trust will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, following the completion of the Transaction, control of the Adviser will transfer to First American. Applicants believe, therefore, that the Transaction will result in an assignment of the Existing Management Agreement and could be deemed to result in an assignment of the Existing Sub-Advisory Agreements and that the Existing Agreements will terminate according to their terms.

3. Rule 15a-4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by an assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that because of the benefits to DGC, the Adviser's parent, arising from the Transaction, applicants can not rely on rule 15a-4.

4. Section 6(c) provides that the SEC may exempt any person, security, or

transaction 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. Applicants believe that the requested relief meets this standard.

5. Applicants note that the timing of the Transaction was determined by DGC and First American and arose primarily out of business considerations unrelated to the Trust. Applicants believe that allowing the Adviser and Subadvisers to continue to provide investment advisory services to the Portfolios during the Interim Period, thereby avoiding any interruption in services to the Portfolios, is in the best interests of the Portfolios and their shareholders and is in keeping with the spirit of the provisions of rule 15a-4 and with the purposes of section 15 of the Act.

6. Applicants submit that the scope and quality of services provided to each Portfolio during the Interim Period will not be diminished. During the Interim Period, each Portfolio would operate under the New Management Agreement and, if applicable, a New Sub-Advisory Agreement each of which is anticipated to be identical in substance to the relevant Existing Agreement, except for its effective date and escrow provisions. Applicants submit that they are not aware of any material changes in the personnel who will provide investment management services during the Interim Period. Accordingly, each Portfolio should receive, during the Interim Period, the same investment advisory services, provided in the same manner, at the same fee levels, and by substantially the same personnel as before the closing of the Transaction.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Management Agreement and New Sub-Advisory Agreements will have substantially the same terms and conditions as the Existing Management Agreement and Existing Sub-Advisory Agreements, except for their effective dates and escrow provisions.

2. Fees earned by the Adviser and Subadvisers in respect of the New Management Agreement and New Sub-Advisory Agreements during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid (a) to the Adviser and Subadvisers in accordance with the New Management Agreement and New Sub-Advisory Agreements,

only after the requisite shareholder approvals are obtained, or (b) to the respective Portfolio, in the absence of such approvals with respect to such Portfolio.

3. The Trust will hold meetings of shareholders to vote on approval of the New Management Agreement and New Sub-Advisory Agreements on or before the 120th day following the termination of the Existing Management Agreement and Existing Sub-Advisory Agreements (but in no event later than September 30, 1998).

4. Either the Adviser or the Subadvisers will bear the costs of preparing and filing the application, and costs relating to the solicitation of shareholder approval of the Portfolios necessitated by the Transaction.

5. The Adviser and Subadvisers will take all appropriate steps so that the scope and quality of advisory and other services provided to the Portfolios during the Interim Period will be at least equivalent, in the judgment of the Board, including a majority of the independent Trustees, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, the Adviser and Subadviser will apprise and consult with the Board to assure that the Trustees, including a majority of the Independent Trustees of the Trust, are satisfied that the services provided will not be diminished in scope or quality.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-10028 Filed 4-14-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23106; 812-10780]

Reich & Tang Distributors, Inc., et al.; Application

April 8, 1998.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants Reich & Tang Distributors, Inc. (the "Sponsor") and Equity Series Trust, Asset Allocation Trust (Series 1 and Subsequent Series) (the "Trust") request an order: (a) Under section 12(d)(1)(J) of the Act that would permit each series of