

NEWCO¹ to, among other things, provide guarantees and similar forms of credit support or enhancements (collectively, "Guarantee") to, or for the benefit of, NEWCO, its nonutility subsidiaries, or NU's other to-be-formed direct or indirect energy related companies, as defined in rule 58 under the Act, in an aggregate amount not to exceed \$75 million, through December 31, 1999. NU and NEWCO now propose to increase the Guarantee authority from \$75 million to \$250 million under the terms and conditions of the Order.²

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-10101 Filed 4-21-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23789; 812-11424]

The RBB Fund, Inc. and Boston Partners Asset Management, L.P.; Notice of Application

April 16, 1999.

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

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a fund of funds relying on section 12(d)(1)(G) of the Act to invest directly in securities and other instruments.

APPLICANTS: The RBB Fund, Inc. ("Company") and Boston Partners Asset Management, L.P. ("Boston Partners"). The requested order also would extend to any existing or future open-end management investment company or series thereof advised by Boston Partners (an "Upper Tier Fund") that wishes to invest in a registered open-end management investment company or series thereof that is advised by Boston Partners and is part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) (together with the series of the Company excluding the Boston Partners Long-Short Equity Fund, the

"Underlying Funds") as the investing Upper Tier Fund.¹

FILING DATES: The application was filed on December 4, 1998 and amended on April 9, 1999.

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 11, 1999 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549-0609. Applicants, c/o Allan J. Oster, Drinker Biddle & Reath LLP, 1345 Chestnut Street, Philadelphia, PA 19107-3496.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714, or George J. Zornada, Branch Chief, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company and organized as a series company (each series a "Fund" and collectively, the "Funds"). Boston Partners is an investment adviser registered under the Investment Advisers Act of 1940 and is the investment adviser for five of the Funds (the "Boston Partners Funds"), including the Boston Partners Market Neutral Fund (the "Market Neutral Fund").² Boston Partners also will be

the investment adviser for a proposed series of the Company, the Boston Partners Long-Short Equity Fund (the "Equity Fund").

2. The Equity Fund will seek a total return greater than that of the Standard and Poor's 500 Composite Stock Price Index by investing in shares of the Market Neutral Fund, while also investing in futures, options on futures, equity swap contracts and other investments (collectively, "Index Securities"). The Market Neutral Fund seeks long-term capital appreciation while minimizing exposure to general equity market risk, by taking long positions in stocks that Boston Partners has identified as undervalued and short positions in stocks that Boston Partners has identified as overvalued. By investing in shares of the Market Neutral Fund, the Equity Fund seeks to capture the return generated by the "market neutral strategy" of the Market Neutral Fund. The Equity Fund and Upper Tier Funds also would like to retain the flexibility to invest, subject to their respective investment restrictions, in other securities and financial instruments (excluding investments in shares of investment companies other than those made in reliance on section 12(d)(1)(G) (collectively, "Other Securities").

3. With respect to the Equity Fund and Market Neutral Fund, Boston Partners expects to reduce its advisory fees and bear certain expenses to the extent that each Fund's total annual operating expenses (excluding nonrecurring account fees and extraordinary expenses) exceed a specified percentage of net assets. Any advisory fee that Boston Partners charges to the Equity Fund will be for services that are in addition to, rather than duplicative of, services provided to the Underlying Funds. Neither the Equity Fund's nor the Underlying Funds' shares are subject to a sales charge and the Equity Fund intends to invest only in shares of the Underlying Funds that are not subject to distribution fees. Applicants believe that the proposed operation of the Equity Fund will benefit investors by lowering transactions and operational costs and providing them with investment alternatives.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the

¹ NEWCO is now known as NU Enterprises and is engaged, through the use of multiple subsidiaries, in various energy related and other activities.

² Rule 52 exempts NEWCO's financial transactions among associate companies from Commission jurisdiction, however, this information is provided for background purposes.

¹ All existing entities that currently intend to rely on the order are named as applicants and any registered open-end management investment company that may rely on this order in the future will do so only in accordance with the terms and conditions of the application.

² The other Boston Partners Funds are the Boston Partners Board Fund, Boston Partners Micro Cap Value Fund, Boston Partners Mid Cap Fund and Boston Partners Large Cap Value Fund.

acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trust in reliance on section 12(d)(1) (F) or (G) of the Act. Applicants state that the proposed arrangement would comply with provisions of section 12(d)(1)(G), but for the fact that the Equity Fund's policies contemplate that it will invest in Index Securities and may invest in Other Securities.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt, conditionally or unconditionally, persons or transactions from the provisions of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants believe that permitting the Equity Fund and other Upper Tier Funds to invest in securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

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

1. Before approving any advisory contract under section 15 of the Act, the Board of Directors of the Company, on behalf of the Equity Fund or an Upper Tier Fund, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather than duplicative of, services that are provided under any Underlying Fund's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the Company's minute books on behalf of the Equity Fund or Upper Tier Fund.

2. Applicants will comply with all of the provisions of section 12(d)(1)(G) of the Act, except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Equity Fund or an Upper Tier Fund from investing in securities as described in the application.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-10100 Filed 4-21-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-26; File No. S7-13-99]

Privacy Act of 1974: Establishment of Two Systems of Records: Disgorgement and Penalties Tracking System (SEC-47) and Fitness Center Membership, Payment, and Fitness Records (SEC-48)

AGENCY: Securities and Exchange Commission.

ACTION: Notice of the establishment of two systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission gives notice of the establishment of two new Privacy Act systems of records: Disgorgement and Penalties Tracking System (SEC-47) and Fitness Center Membership, Payment, and Fitness Records (SEC-48).

DATES: The proposed systems will become effective June 1, 1999, unless further notice is given. The Commission will publish a new notice if the effective

date is delayed to review comments, or if changes are made based on comments received. To be assured of consideration, comments must be received on or before May 24, 1999.

ADDRESSES: Persons wishing to submit comments should file three (3) copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 0609, Washington, DC 20549-0609. Reference should be made to File S7-13-99. Copies of the comments will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Betty Lopez, Privacy Act Officer (202) 942-4327, Office of Filings and Information Services, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O-5, Alexandria, VA 22312-2413.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission" or "SEC") gives notice of the establishment of two systems of records entitled Disgorgement and Penalties Tracking System (SEC-47) and Fitness Center Membership, Payment, and Fitness Records (SEC-48).

The SEC is establishing SEC-47 to facilitate SEC staff tracking of the repayment of disgorgement and penalties imposed on entities and individuals who have been determined to be violators of the provisions of the federal securities laws in SEC-initiated civil actions and administrative proceedings. The Commission's staff uses the records for case administration and collections. The system also is used to provide status reports to the Congress and the Department of the Treasury, and for responding to requests for information filed under the Freedom of Information Act.

The SEC is establishing SEC-48 in order to maintain payment and fitness information needed for operating the SEC Fitness Center. The SEC established the Fitness Center to provide fitness facilities to members of the Commission's staff. Members of the Commission's staff oversee the Fitness Center and have access to SEC-48 records in order to perform their official Fitness Center duties.

The systems of records reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, have been submitted to the Committee on Government Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," as