pursue anyone in any regard other than preserving and realizing on the assets. Applicant states that trustees are not required to pursue securities law or fraud claims on behalf of debt holders and may often be foreclosed from such enforcement because debt holders may have different and conflicting rights.

13. For all of these reasons, Applicant submits that exemptive relief is therefore appropriate and consistent with the protection of investors.

Consistent With Policies and Purposes Underlying the Independent Trustee Requirement and the Rule

14. Applicant submits that the concerns underlying the Independent Trustee Requirement are not implicated if the trustee for an Issuer is independent of the sponsor, servicer, and credit enhancer for the Issuer, but is affiliated with an underwriter for the Issuer, because, in that situation, no single entity would act in all capacities in the issuance of the ABS and the operation of an Issuer. Applicant states that Applicant would continue to act as an independent party safeguarding the assets of an Issuer regardless of an affiliation with an underwriter of the ABS. Applicant submits that, in addition, the concern that affiliation could lead to a trustee monitoring the activities of an affiliate also is not implicated by a trustee's affiliation with an underwriter, because, in practice, a trustee for an Issuer does not monitor the distribution of securities or any other activity performed by underwriters.

15. Applicant submits that exemptive relief permitting the participation of the Applicant and an affiliated underwriter in an ABS Transaction would be consistent with the broader purposes of Rule 3a–7, because in adopting Rule 3a–7, the Commission intended that, consistent with investor protection, the Rule not hamper the growth and development of the structured finance market. Applicant submits that the requested exemption would allow the selection of a trustee for an ABS Transaction based on the trustee's qualification, rather than technical regulatory restriction, and therefore would alleviate unnecessary market distortions that result from the current Independent Trustee Requirement.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

(1) Applicant will not be affiliated with any person involved in the organization or operation of the Issuer in an ABS Transaction other than the underwriter.

(2) Applicant's relationship to an affiliated underwriter will be disclosed in writing to all parties involved in an ABS Transaction, including the rating agencies and the ABS securities holders.

(3) An underwriter affiliated with Applicant will not be involved in the operation of an Issuer, and its involvement in the organization of an Issuer will extend only to determining the assets to be pooled, assisting in establishing the terms of the ABS to be underwritten, and providing the sponsor with a warehouse line of credit with which to purchase the pool assets.

(4) An affiliated person of Applicant, including an affiliated underwriter, will not provide credit or credit enhancement to an Issuer if Applicant serves as trustee to the Issuer.

(5) An underwriter affiliated with Applicant will not engage in any remarketing agent activities, including involvement in any auction process in which ABS interest rates, yields, or dividends are reset at designated intervals in any ABS Transaction for which Applicant serves as trustee to the Issuer.

(6) All of an affiliated underwriter's contractual obligations pursuant to the underwriting agreement will be enforceable by the sponsor.

(7) Consistent with the requirements of Rule 3a–7(a)(4)(i), Applicant will resign as trustee for the Issuer if Applicant becomes obligated to enforce any of an affiliated underwriter's obligations to the Issuer.

(8) Applicant will not price its services as trustee in a manner designed to facilitate its affiliate being named underwriter.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–22609 Filed 1–4–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27612; 813–356]

Opal Private Equity Fund, L.P. et al.; Notice of Application

December 27, 2006.

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

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

SUMMARY OF THE APPLICATION: Applicants request an order to exempt certain investment funds formed for the benefit of eligible current and former employees of Schottenstein, Zox & Dunn Co., L.P.A., and its affiliates from certain provisions of the Act. Each fund will be an ''employees' securities company'' as defined in section 2(a)(13) of the Act.

APPLICANTS: Opal Private Equity Fund, LP (the ''Investment Fund'') and Schottenstein, Zox & Dunn Co., L.P.A. (together with any business organization that results from a reorganization of Schottenstein, Zox & Dunn Co., L.P.A., into a different type of business organization or into an entity organized under the laws of another jurisdiction, ''SZD'').

FILING DATES: The application was filed on December 30, 2004 and amended on December 22, 2006.

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 January 22, 2007 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, 100 F St., NE., Washington, DC 20549–9303. Applicants, 250 West St., Columbus, Ohio 43215–5020.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 551–6813, or Mary Kay Frech, 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 St., NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. SZD is a law firm incorporated under the laws of the State of Ohio as a legal professional association. SZD and its ''affiliates,'' as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''Exchange Act''), are referred to collectively as the ''SZD Group'' and individually as a ''SZD entity.'' The shareholders of SZD are referred to as ''Principals.''

2. The Investment Fund is a Delaware limited partnership. The applicants may in the future offer additional pooled investment vehicles identical in all material respects to the Investment Fund (other than investment objectives and strategies) (the ''Subsequent Funds'') (together, the Investment Fund and the Subsequent Funds are referred to as the ''Funds''). The applicants anticipate that each Subsequent Fund will also be structured as a limited partnership, although a Subsequent Fund could be structured as a limited liability company, corporation, trust or other business organization formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act. The Funds will operate as non-diversified, closed-end management investment companies. The Funds will be established to enable the Principals and certain attorney employees of SZD Group to participate in certain investment opportunities that come to the attention of SZD Group. Participation as investors in the Funds will allow the Eligible Investors, as defined below, to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

3. Opal Private Equity, Inc., a wholly-owned subsidiary of SZD, will serve as the general partner (the ''General Partner'') of each Fund. The Funds will have one or more investment committees (''Investment Committees''), each member of which shall be a Principal. The General Partner or SZD shall appoint the members of each Investment Committee. The General Partner or any person involved in the operation of the Funds will register as an investment adviser if required under the Investment Advisers Act of 1940, or the rules under that Act.

4. Interests in the Funds (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act''), Regulation D under the Securities Act or rule 701 under the Securities Act, or any successor rule, and will be sold solely to Eligible Investors. Eligible Investors consist of ''Eligible Employees,'' ''Qualified Investment Vehicles,'' each as defined below, and SZD entities. The term ''Fund Investors'' refers to Eligible Investors who invest in the Funds. Prior to offering Interests in a Fund to an individual, the General Partner must reasonably believe that the individual is a sophisticated investor capable of understanding and evaluating the risks of participating in the Fund without the benefit of regulatory safeguards. An ''Eligible Employee'' is a person who is, at the time of investment, a current Principal of SZD or lawyer employed by SZD who (a) meets the standards of an ''accredited investor'' set forth in rule 501(a)(5) or rule 501(a)(6) of Regulation D under the Securities Act, (b) is one of 35 or fewer lawyers employed by SZD who meets certain requirements (''Category 2 investors''), or (c) is a lawyer employed by SZD who purchases Interests pursuant to an offering under rule 701 under the Securities Act (''rule 701'') (''Category 3 investors'').

5. Each Category 2 investor will be a lawyer employed by SZD, who meets the sophistication requirements set forth in rule 506(b)(2)(ii) of Regulation D under the Securities Act [1] and who (a) has a minimum of 3 years of business and/or professional experience, has had compensation of at least $150,000 in the preceding 12 month period, and has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods, or (b) is a ''knowledgeable employee,'' as defined in rule 3c–5 under the Act, of the Fund (with the Fund treated as though it were a ''Covered Company'' for purposes of the rule). In addition, a Category 2 investor qualifying under (a) above will not be permitted to invest in any calendar or fiscal year (as determined by SZD) more than 10% of his or her income from all sources for the immediately preceding calendar or fiscal year in one or more Funds.

6. Each Category 3 investor will be a lawyer employed by SZD who reasonably expects to have compensation of at least $120,000 in the next 12 months and who has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods. In addition, any Category 3 investor who is not a Principal will not be permitted to invest in any calendar or fiscal year (as determined by SZD) more than 10% (or 5%, if he or she has been employed as a lawyer for less than 3 years) of his or her reasonably expected income from all sources for that year in one or more Funds. Category 3 investors will purchase Interests pursuant to an offering under rule 701. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, SZD will make available at no charge to potential Fund Investors the services of an independent third party (''Financial Consultant'') qualified to provide advice concerning the appropriateness of investing in a Fund.

7. A Qualified Investment Vehicle is a trust or other entity the sole beneficiaries of which are Eligible Employees or their Immediate Family Members or the settlors and trustees of which consist of Eligible Employees or Eligible Employees together with Immediate Family Members.[2] Immediate Family Members include any parent, child, spouse of a child, spouse, brother or sister, and includes any step and adoptive relationships. A Qualified Investment Vehicle must be either (a) an accredited investor as defined in rule 501(a) of Regulation D or (b) an entity for which an Eligible Employee is a settlor and principal investment decision-maker.[3]

8. Each Fund may issue its Interests in series (each, a ''Series' and collectively, the ''Series'') with new Series of Interests being offered from time to time. Each Series may be further divided into two or more separate classes (each, a ''Class''), having such terms and conditions as the General Partner may establish. Each Series will represent an interest in some or all of those Fund investments made by the Fund during a specified period of time (the ''Investment Period''). Following the end of a Series' Investment Period, no new investments will be made for that Series, although following a Series' Investment Period additional money may be contributed to an existing investment.

9. In order to comply with the requirements of rule 701, at the beginning of each Investment Period,

[1] Some or all Category 2 investors may purchase their Interests in an offering under rule 701 rather than under Regulation D.

[2] A Qualified Investment Vehicle is not permitted to participate in a rule 701 offering. SZD or the General Partner may, however, in their discretion and in compliance with rule 701, permit an Eligible Employee who purchases Interests in the Fund in a rule 701 offering to transfer some or all of those Interests to a Qualified Investment Vehicle.

[3] If a Qualified Investment Vehicle is an entity other than a trust, the reference to ''settlor'' shall be construed to mean a person who created the vehicle, alone or together with others, and who contributed funds or other assets to the vehicle.

the Fund will accept capital contributions or irrevocable commitments for the relevant Series from those Eligible Investors investing pursuant to Regulation D (the ''Regulation D Investors''), and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments for that Series from those Eligible Investors investing pursuant to rule 701 (the ''Rule 701 Investors''). The capital contributions and commitments of the Rule 701 Investors, in the aggregate, will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors. Because the capital commitments of the Rule 701 Investors may be funded, in whole or in part, through periodic payroll deductions, the Rule 701 Investors may from time to time contribute money prior to the time the Fund is able to invest that money. It currently is anticipated that any such amounts will be placed in a separate bank or escrow account, pending the delivery of the money to the Fund for investment or other authorized purposes. No more than approximately 13% (*i.e.*, 15% of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors) of all Fund investments and other authorized expenditures for each Series will at any time be paid for out of money contributed to the Fund by Rule 701 Investors.

10. The terms of a Fund will be fully disclosed in the private placement memorandum of the Fund, and each Eligible Investor will receive a private placement memorandum and the Fund's limited partnership agreement (or other organizational documents) prior to his or her investment in the Fund. Each Fund will send its Fund Investors annual reports, which will contain audited financial statements with respect to those Series in which the Fund Investor has Interests, as soon as practicable after the end of each fiscal year. In addition, as soon as practicable after the end of each fiscal year, the Funds will send a report to each Fund Investor setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state tax returns.

11. Fund Investors will be permitted to transfer their Interests only by operation of law, to a receiver or trustee in bankruptcy for that Fund Investor, to the Fund Investor's estate in the event of his or her death, or with the express consent of the General Partner. The General Partner does not anticipate giving such consent. No person may become a transferee or substitute Fund Investor unless that person is a member of one of the classes of persons listed in section 2(a)(13) of the Act, except that a legal representative or executor may hold an Interest in order to settle the estate of a decedent or bankrupt or for similar purposes. No fee of any kind will be charged in connection with the sale of Interests.

12. A Fund Investor's Interests may be subject to repurchase or cancellation if: (a) The Fund Investor ceases to be an Eligible Investor; (b) the Fund Investor is no longer deemed to be able to bear the economic risk of investment in a Fund; (c) adverse tax consequences were to inure to the Fund were a particular Fund Investor to remain; or (d) the continued membership of the Fund Investor would violate applicable law or regulations. In addition, SZD reserves the right to impose vesting provisions on a Fund Investor's investments in a Fund. In an investment program that provides for vesting provisions, all or a portion of a Fund Investor's Interests will be treated as unvested, and vesting will occur through the passage of a specified period of time. To the extent a Fund Investor's Interests become ''vested,'' the termination of such Fund Investor's association or employment with SZD will not affect the Fund Investor's rights with respect to the vested Interests. If a Fund Investor's employment with SZD terminates because of (a) death, (b) total and permanent disability as defined by SZD's group insurance policy or (c) retirement from the practice of law upon or after such Fund Investor attaining the age of fifty-five (each a ''Qualifying Termination''), then such Fund Investor shall be fully vested in his or her Interests in the Fund. If a Fund Investor's employment with SZD terminates for reasons other than a Qualifying Termination, then such Fund Investor's Interests that are unvested shall be subject to repurchase or cancellation. Upon any repurchase or cancellation of all or a portion of a Fund Investor's Interests, a Fund will at a minimum pay to the Fund Investor the lesser of (a) the amount actually paid by the Fund Investor to acquire the Interests less the amount of any distributions received by that Fund Investor from the Fund (plus interest at or above the prime rate, as determined by the General Partner) and (b) the fair market value of the Interests determined at the time of repurchase or cancellation, as determined in good faith by the General Partner. Any interest owed to a Fund Investor pursuant to (a) above will begin to accrue at the end of the Investment Period.

13. With respect to any Interests that have vested, the terminated Fund Investor will have the right to elect (a) to continue as a Fund Investor, or (b) to have the fair market value, as determined in good faith by the General Partner, of such terminated Fund Investor's Interests determined as of the date of termination. If the election described in (b) of the preceding sentence is made, the value of the vested Interests of the terminated Fund Investor shall be deemed to have been repurchased by the relevant Series of the Fund and payment shall be made to the terminated Fund Investor in five consecutive annual payments, with interest at or above the prime rate, as determined by the General Partner, unless the General Partner determines to postpone payment until a liquidity event takes place allowing the Fund to make payment of the terminated Fund Investor. In no event will the terminated Fund Investor be paid later than the date that all Fund Investors in the Series receive their liquidating distribution. The General Partner may accelerate any payments due to a terminated Fund Investor. The General Partner has the right to amend the limited partnership agreement to allow for less restrictive vesting terms.

14. SZD may be reimbursed by a Fund for reasonable and necessary out-of-pocket costs directly associated with the organization and operation of the Funds. There will be no allocation of any of SZD's operating expenses to a Fund. In addition, SZD may allocate to a Series any out-of-pocket expenses specifically attributable to the organization and operation of that Series. No separate management fee will be charged to a Fund by the General Partner, and no compensation will be paid by a Fund or by Fund Investors to the General Partner for its services.

15. SZD may in its discretion advance funds to Eligible Investors for the purpose of making their capital contributions. SZD currently expects that no interest will be charged on such loans, but SZD reserves the right to charge interest on such loans in the future. The interest rate charged on such loans will not exceed the prime rate.

16. The Funds may borrow from SZD Group, Principals, or a bank or other financial institution, provided that a Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper).

Any borrowings by a Fund will be non-recourse other than to SZD or an SZD entity. If SZD or an SZD entity or a Principal makes a loan to the Funds, the interest rate on the loan will be no less favorable to the Funds than the rate that could be obtained on an arm's length basis.

17. No Fund will acquire any security issued by a registered investment company if immediately after the acquisition the Fund would own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit a Fund to: (a) Purchase, from SZD or any affiliated person thereof, securities or interests in properties previously acquired for the account of SZD or any affiliated person thereof; (b) sell, to SZD or any affiliated person thereof, securities or interests in properties previously acquired by the Funds; and (c) purchase interests in any company or other investment vehicle (i) in which SZD owns 5% or more of the voting securities, or (ii) that otherwise is an affiliated person of the Fund (or an affiliated person of such a person) or an affiliated person of SZD.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Fund Investors will be informed in the Fund's private placement memorandum of the possible extent of the Fund's dealings with SZD or any affiliated person thereof. Applicants also state that, as financially sophisticated professionals, Fund Investors will be able to evaluate the attendant risks. Applicants assert that the community of interest among the Fund Investors and SZD will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Fund, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Fund is a participant. Joint transactions in which a Fund may participate could include the following: (a) an investment by one or more Funds in a security in which SZD or its affiliated person, or another Fund, is a participant, or with respect to which SZD or an affiliated person is entitled to receive fees (including, but not limited to, legal fees, placement fees, investment banking fees, brokerage commissions, or other economic benefits or interests); and (b) an investment by one or more Funds in a security in which an affiliate is or may become a participant.

6. Applicants state that strict compliance with section 17(d) would cause the Funds to forego investment opportunities simply because a Fund Investor, SZD or other affiliates of the Fund also had made or contemplated making a similar investment. In addition, because investment opportunities of the types considered by the Funds often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which a Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants note that, in light of SZD's purpose of establishing the Funds so as to reward Eligible Investors and to attract highly qualified personnel to SZD, the possibility is minimal that an affiliated party investor will enter into a transaction with a Fund with the intent of disadvantaging the Fund. Finally, applicants contend that the possibility that a Fund may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 4 below. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of SZD or of a Principal; (b) for purposes of paragraph (d) of the rule, (i) employees of SZD will be deemed employees of the Funds, (ii) officers of the General Partner and the General Partner of a Fund will be deemed to be officers of the Fund, and (iii) the General Partner of a Fund will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of SZD. Applicants assert that the securities held by the Funds are most suitably kept in SZD's files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons (''disinterested directors'') take certain

actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g–1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g–1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g–1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules thereunder. Rule 17g–1(j)(3) requires that the board of directors of an investment company satisfy the fund governance standards defined in rule 0–1(a)(7). Applicants request an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit each Fund to comply with rule 17g–1 without the necessity of having a majority of the disinterested directors take such action and make such approvals as are set forth in the rule. Specifically, each Fund will comply with rule 17g–1 by having the General Partner take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that, because the General Partner will be an interested person of the Fund, a Fund could not comply with rule 17g–1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as applied to the Funds. The General Partner will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and agree that all such material will be subject to examination by the Commission and its staff. The General Partner will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be given to the board of directors would be unnecessary as the Funds will not have boards of directors. The Funds will comply with all other requirements of rule 17g–1.

9. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds.

10. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Fund Investors. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Fund Investors. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Fund and any other persons who may be deemed members of an advisory board of a Fund from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership of Interests in the Fund. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

11. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies and procedures reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. The Funds will comply with rule 38a–1(a), (c) and (d), except that (a) since the Funds do not have boards of directors, the board of directors of the General Partner will fulfill the responsibilities assigned to a Fund's board of directors under the rule, and (b) since the board of directors of the General Partner does not have any disinterested members, approval by a majority of the disinterested board members required by rule 38a–1 will not be obtained.

Applicants' Conditions

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

Fund Operations

1. Each proposed transaction to which a Fund is a party otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (each, a ''Section 17 Transaction'') will be effected only if the General Partner determines that: (a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Fund Investors of the participating Fund and do not involve overreaching of the Fund or its Fund Investors on the part of any person concerned; and (b) the Section 17 Transaction is consistent with the interests of the Fund Investors of the participating Fund, the Fund's organizational documents and the Fund's reports to its Fund Investors.

In addition, the General Partner will record and preserve a description of such Section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis therefor. All such records will be maintained for the life of a Fund and at least five years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. If purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a Principal or employee of the SZD Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

3. The General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The General Partner will not make on behalf of a Fund any investment in which a Co-Investor, as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and the Co-Investor are

participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with the Co-Investor. The term ''Co-Investor'' with respect to any Fund means any person who is (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund; (b) the SZD Group; (c) a Principal, lawyer, or employee of the SZD Group; (d) an investment vehicle offered, sponsored, or managed by SZD or an affiliated person of SZD; or (e) an entity in which an SZD entity acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

5. The General Partner of each Fund will send to each person who was a Fund Investor in such Fund at any time during the fiscal year then ended audited financial statements with respect to those Series in which the Fund Investor held Interests. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Fund as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the General Partner of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. Each Fund and the General Partner will maintain and preserve, for the life of each Series of that Fund and at least five years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and annual reports of such Series to be provided to its Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

Compliance With Rule 701

7. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, SZD will make available at no charge to potential Fund Investors the services of a Financial Consultant qualified to provide advice concerning the appropriateness of investing in a Fund. Specifically, the Financial Consultant will hold one or more group meetings with potential Fund Investors at which the Financial Consultant will discuss the risks and other considerations relevant to determining whether to invest in a Fund. The Financial Consultant also will be available to the group of potential Fund Investors to answer general questions regarding an investment in the Fund. In addition, potential Fund Investors will be given the opportunity to submit relevant questions and issues to the Financial Consultant in advance of the group meetings, so that the Financial Consultant can address those questions and issues at the meetings. SZD will not need to reveal the specific investments made by any Fund to the Financial Consultant, as long as the investment objectives, risk characteristics and other material information about the Fund of the type that would be disclosed in the offering documents for the Fund is made available to the Financial Consultant.

8. SZD will at all times control each Fund, within the meaning of rule 405 under the Securities Act. In this regard, SZD will, either directly or through a wholly-owned subsidiary, be the General Partner of the Fund, own at least 95% of the voting Interests of the Fund, and make all investment and other operational decisions for the Fund.

9. SZD or a wholly-owned subsidiary will own not less than 5% of the economic Interests issued each year by the Fund, and (as discussed above) at least 95% of the voting Interests of the Fund. In addition, SZD and its Principals, directly or through Qualified Investment Vehicles, together will own at least 80% of the economic Interests of each Series.

10. SZD prepares its financial statements on a modified cash basis, and does not consolidate the Fund's financial statements with its own. If, however, SZD prepared its financial statements in accordance with GAAP, it would consolidate the Fund's financial statements with its own.

11. SZD, when offering Interests pursuant to rule 701 under the Securities Act, will issue Interests in each Series in compliance with rule 701(d)(2),[4] and will comply with all applicable requirements of rule 701(e).[5]

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–22605 Filed 1–4–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Cosmetic Center, Inc., Impax Laboratories, Inc., Phoenix Waste Services Company, Inc., and Telynx, Inc.; Order of Suspension of Trading

December 29, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cosmetic Center, Inc., because it has not filed any periodic reports since the period ended September 26, 1998.

It appears to the Securities and Exchange Commission that there is a

[4] If SZD relies on rule 701(d)(2)(ii), it will not sell pursuant to rule 701, during any consecutive 12-month period, Interests in the Fund if the sales price of those Interests exceeds 15% of the total assets of the Fund.

[5] In order to comply with the requirements of rule 701, at the beginning of each Investment Period the Fund will accept capital contributions or irrevocable commitments from Regulation D Investors for the relevant Series, and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments, from Rule 701 Investors for that Series, which in the aggregate will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from Regulation D Investors.