

and officers of Pioneer Winthrop Fund and officers of Variable Trust.

5. On May 11, 1995, Apollo and Nomura announced that they had entered into negotiations pursuant to which Apollo intended to acquire from Nomura its controlling interest, and from the Management Investors their remaining minority interest, in Realty LP (the "Reorganization"). On July 17, 1995, the Reorganization was consummated. PMC agreed to provide the investment advisory services now provided to the Funds by PWA and WALP.

6. PMC has entered into an employment agreement with the key employee of WALP, pursuant to which such employee has agreed to provide to PMC real estate securities advice equivalent to that which he currently provides to the Funds through WALP. In addition, PMC is in the process of entering into a consulting agreement with Winthrop Commercial Partnership ("WCP"), a subsidiary of WFA, under which WCP will continue to provide information regarding real estate properties and markets that it currently provides to the Funds through WALP. WCP will provide this information to PMC under the consulting agreement at cost, which will be borne by PMC.

7. Immediately upon being notified of the agreements in principal, the respective Boards of Trustees of the Funds (the "Boards") held special meetings on June 6, 1995 to discuss the Reorganization. During those meetings, the Boards, including a majority of the Board members who are not "interested persons," as that term is defined in the Act (the "Independent Trustees"), of the respective Funds, with the advice and assistance of counsel to the Independent Trustees, made a full evaluation of the interim investment advisory agreements between the Funds and PMC (the "Interim Agreements"). In accordance with section 15(c) of the Act, the Boards voted to approve the Interim Agreements. The Boards concluded that payment of the advisory and subadvisory fees during the Interim Period would be appropriate and fair because there will be no diminution in the scope and quality of services provided to the Funds, the fees to be paid are unchanged from the fees paid under the Prior Agreements, the fees would be maintained in an interest-bearing escrow account until payment is approved or disapproved by shareholders, and the nonpayment of fees would be inequitable to PMC in view of the substantial services to be provided by PMC to the Funds, and the expenses incurred by PMC. The Boards of each Fund also voted to recommend

that shareholders of each Fund approve the Interim Agreements, as well as the new advisory agreements with PMC.

8. Applicants seek an exemption from section 15(a) of the Act to permit the implementation, without shareholder approval, of the Interim Agreements. On June 20, 1995, the date of the filing of the original application, applicant anticipated that the Reorganization would be consummated on July 3, 1995. Accordingly, the exemption would cover the period commencing on July 3, 1995 and continuing through the date the Interim Agreements are approved or disapproved by shareholders of the respective Funds, which period shall be no longer than 120 days (the "Interim Period").

#### **Applicants' Legal Conclusions**

1. Section 15(a) prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved by a majority of the voting securities of such investment company. Section 15(a) further requires that such written contract provide for its automatic termination in the event of an assignment. Section 2(a)(4) 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. Section 2(a)(9) defines "control" as the power to exercise a controlling influence over the management or policies of a company. Beneficial ownership of more than 25% of the voting securities of a company is presumed under section 2(a)(9) to constitute control.

3. Upon consummation of the Reorganization, Apollo will acquire all of Realty LP's outstanding voting securities and thus an indirect, controlling interest in each of WFA and WALP, including WFA's 50% general partnership interest in PWA. Thus, the Reorganization will result in an "assignment," within the meaning of section 2(a)(4), of the Advisory Agreements and WALP Subadvisory Agreements. Therefore, each agreement will terminate by its terms.<sup>1</sup>

4. Rule 15a-4 provides, among other things, that if an advisory contract is terminated by assignment, the investment adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of

the investment company, and if the investment adviser or a controlling person of the investment adviser does not directly or indirectly receive money or other benefit in connection with the assignment. Because Nomura and the Management Investors will receive a benefit in connection with the assignment of the contracts, applicants may not rely on rule 15a-4.

5. Applicants assert that because the Funds did not have sufficient advance notice of the Reorganization, it was not possible for the Funds to obtain shareholder approval of the new advisory agreements in accordance with section 15(a) prior to the closing of the Reorganization. Applicants believe that the requested relief will enable the Funds to receive the same scope and quality of advisory services after the Reorganization as they received prior to the Reorganization, and that the engagement of PMC as the Funds' sole investment adviser is in the best interests of the Funds and their shareholders.

6. Applicants believe that the requested relief will allow the Funds to continue to operate on an orderly basis until the shareholders have the opportunity to consider new investment advisory agreements. The 120 day Interim Period will facilitate the orderly and reasonable consideration of the new agreements.

7. Section 6(c) of the Act 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.

#### **Applicants' Conditions**

Applicants agree as conditions to the requested exemptive relief that:

1. The Interim Agreements will have the same terms and conditions as the Advisory Agreements, except in each case for the names and identities of the parties, the dates of execution and termination, and the inclusion of escrow arrangements.

2. Fees earned by PMC during the Interim Period in accordance with the Interim Agreements will be maintained in an interest-bearing escrow account, and amounts in such account (including interests earned on such paid fees) will be paid to PMC only upon approval of the Funds' respective shareholders or, in the absence of such approval, to the respective Funds.

<sup>1</sup> The PMC Subadvisory Agreements terminate by their terms upon the termination of the Advisory Agreements.