simplification of the EOIs would be a safety benefit.

As stated previously, the underlying purpose of 10 CFR 50.44 is to show that, following a LOCA, an uncontrolled hydrogen-oxygen recombination would not take place, or that the plant could withstand the consequences of uncontrolled hydrogen-oxygen recombination without loss of safety function. Based on the licensee's analysis, the NRC staff's evaluation of the risk from hydrogen combustion, resolution of GI–121, and the TMI–1 IPE, the NRC staff has determined that the plant could withstand the consequences of uncontrolled hydrogen-oxygen recombination without loss of safety function without credit for the hydrogen recombiners for not only the design-basis case, but also for the more limiting severe accident with up to 100 percent metal-water reaction. Therefore, the requirements for hydrogen recombiners as part of the TMI–1 design basis are unnecessary, and their removal from the design basis is acceptable. Additionally, elimination of the hydrogen recombiners from the EOIs would simplify operator actions in the event of an accident and, therefore, would be a safety benefit. Consequently, pursuant to 10 CFR 50.12(a)(2)(ii), application of the regulation is not necessary to achieve the underlying purpose of the rule.

In the submittal, the licensee also requested an exemption from the functional requirement for hydrogen monitoring as promulgated in Part 50, Appendix E, Section VI, ''Emergency Response Data System (ERDS),'' and the elimination of any commitments made in regard to NUREG–0737, Item II.F.1, Attachment 6, ''Containment Hydrogen Monitor.'' However, in the Statement of Considerations for Appendix E to Part 50, the Commission stated that the ERDS data (which include data from the continuous hydrogen monitors) provide the data required by the NRC to perform its role during an emergency. This conclusion is still valid for not only the NRC staff, but also for licensees. The major vendors' core damage assessment methodologies continue to include continuous hydrogen monitoring. Core damage assessment methodologies were reviewed by the NRC staff in response to NUREG–0737, Item II.B.3(2)(a). Continuous hydrogen monitoring is needed to support a plant's emergency plan as described in 50.47(b)(9). Implementing documents such as RG 1.101, Revision 2, which endorsed NUREG–0654, and RG 1.101, Revision 3, which endorsed NEI–NESP–007, Revision 2, define the highest Emergency Action Level, a General Emergency, as a loss of any two barriers and potential loss of the third barrier. Potential loss of a third barrier depends on whether or not an explosive mixture exists inside containment. The continuous hydrogen monitors are used for determining whether an explosive mixture exists inside containment. Therefore, the licensee's request for exemption from the functional requirements for hydrogen monitoring is not approved.

The NRC staff has determined that for the requested exemptions related to the hydrogen recombiners and backup hydrogen purge system, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances are present, in that application of the regulations in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption from the hydrogen recombiner and hydrogen purge system requirements is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants AmerGen Energy Company, LLC, an exemption from the requirements for hydrogen recombiners and the hydrogen purge system of 10 CFR 50.44, and 10 CFR part 50, Appendix A, General Design Criterion 41, for the TMI–1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 1788).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day of February 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–3618 Filed 2–13–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 10f–3, OMB Control No. 3235–0226, SEC File No. 270–237.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information discussed below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 10(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(f)) (the ''Act'' or ''Investment Company Act'') prohibits a registered investment company (''fund'') from purchasing any security during an underwriting or selling syndicate if the fund has certain relationships with a principal underwriter [1] for the security (''affiliated underwriter'').[2] Congress enacted this provision in 1940 to protect funds and their investors by preventing underwriters from ''dumping'' unmarketable securities on affiliated funds.[3]

In 1958, under rulemaking authority in section 10(f), the Commission adopted rule 10f–3, which is entitled ''Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate.'' The Commission last amended the rule in January 2001.[4] Rule 10f–3 currently permits a fund to purchase securities in a transaction that otherwise would

[1] ''Principal underwriter'' is defined to mean (in relevant part) an underwriter that, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer, (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate, or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution. 15 U.S.C. 80a–2(a)(29).

[2] Section 10(f) prohibits the purchase if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund, or if any officer, director, member of an advisory board, investment adviser, or employee of the fund is affiliated with the principal underwriter. 15 U.S.C. 80a–10(f).

[3] See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 35 (1940) (statement of Commissioner Healy).

[4] Additional amendments to rule 10f–3 were proposed on November 29, 2000. Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 24775 (Nov. 29, 2000). These proposals, if adopted, would expand the exemption provided by the rule to permit a fund to purchase government securities in a syndicated offering and modify the rule's percentage limit on purchases.

violate section 10(f) if, among other things: [5]

(1) The securities either are registered under the Securities Act of 1933, are municipal securities with certain credit ratings, or are offered in certain private or foreign offerings;

(2) The securities purchases meet certain conditions with respect to timing and price;

(3) The issuer of the securities has been in continuous operation for at least three years prior to the issuance of the securities;

(4) The offering involves a ''firm commitment'' underwriting;

(5) The underwriters' commission is reasonable;

(6) The fund (together with other funds advised by the same investment adviser) purchases no more than twenty-five percent of the offering;

(7) The fund purchases the securities from a member of the syndicate other than the affiliated underwriter;

(8) Each transaction effected under the rule is reported on Form N–SAR;

(9) The fund's directors have approved procedures for purchases made in reliance on the rule, regularly review fund purchases to determine whether they comply with these procedures, and approve necessary changes to the procedures; and

(10) A written record of each transaction effected under the rule is maintained for six years, the first two of which in an easily accessible place.[6]

These limitations are designed to prevent purchases under the rule from raising the concerns that section 10(f) was enacted to address and to protect the interests of investors. These requirements provide a mechanism for fund boards to oversee compliance with the rule. The required recordkeeping facilitates the Commission staff's review of rule 10f–3 transactions during routine fund inspections and, when necessary, in connection with enforcement actions.

The staff estimates that approximately 410 funds engage in a total of approximately 2050 rule 10f–3 transactions each year. We estimate that each fund makes an average of fifteen responses per year and that the 410 funds that rely on rule 10f–3 make a total of 6150 annual responses.[7] Before making a purchase under rule 10f–3, the purchasing fund must document that the transaction complies with the conditions in the rule, a process which the staff estimates takes an average of approximately thirty minutes per transaction at a cost of $22.44 per transaction.[8] Thus, annually, in the aggregate, funds spend approximately 1025 hours [9] at a cost of $46,002 [10] on pre-transaction reporting. The staff estimates that, after the transaction is complete, an additional thirty minutes is spent completing the record of the transaction at a cost of $22.44 per transaction.[11] Thus, annually, in the aggregate, funds spend approximately 1025 hours [12] at a cost of $46,002 [13] on post-transaction reporting. The staff estimates further that preparation of a quarterly report of all rule 10f–3 transactions for the board of directors takes approximately 1.5 hours per quarter (in which there are 10f–3 transactions) at a cost of $43.78.[14] The staff estimates that, on average, each of the 410 funds engages in rule 10f–3 transactions during two quarters each year. Thus, annually in the aggregate, funds spend approximately 1230 hours [15] at a cost of $35,900 [16] on the preparation of quarterly transaction reports. The staff estimates that the board of directors spends fifteen minutes reviewing these reports each quarter (in which there are 10f–3 transactions) at a cost of $500.[17] Thus, annually, in the aggregate, funds spend approximately 205 hours [18] at a cost of $410,000 [19] for the quarterly review of rule 10f–3 transactions by boards. The staff further estimates that reviewing and revising as needed written procedures for rule 10f–3 transactions takes, on average, two hours of a compliance attorney's time at a cost of approximately $124.02 [20] per year and fifteen minutes of board time at a cost of $500 per year.[21] Thus, annually, in the aggregate, the staff estimates that funds spend a total of approximately 922.5 hours [22] at a cost of approximately $255,848 [23] on monitoring and revising rule 10f–3 procedures. The staff estimates, therefore, that rule 10f–3 imposes an information collection burden of 4407.5 hours [24] at a cost of $793,752.[25] This estimate does not include the time spent filing transaction reports on Form N–SAR, which is encompassed in the information collection burden estimate for that form. Commission staff estimates that there is no cost burden for rule 10f–3 other than the costs associated with the hour burden. These estimates are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections

[5] See Rule 10f–3(b).

[6] The written record must state (i) from whom the securities were acquired, (ii) the identity of the underwriting syndicate's members, (iii) the terms of the transactions, and (iv) the information or materials on which the fund's board of directors has determined that the purchases were made in compliance with procedures established by the board. See Rule 10f–3(b)(12).

[7] 2050 instances of pre-transaction reporting + 2050 instances of post-transaction reporting + 820 quarterly reports + 820 quarterly reviews by fund boards + 410 instances of monitoring and revision of rule 10f–3 procedures = 6150 responses.

[8] Typically, personnel from several departments, including portfolio management and compliance, share this task. The staff estimates that the average hourly rate for these personnel is $44.87.

[9] 2050 transactions per year × 30 minutes per transaction = 1025 hours.

[10] 2050 transactions × $22.44/transaction = $46,002.

[11] As with the reporting at the time of the transaction, the task of completing the record of the transaction is shared among personnel for whom the staff estimates the average hourly rate to be $44.87.

[12] 2050 transactions per year × 30 minutes per transaction = 1025 hours.

[13] 2050 transactions per year × $22.44/transaction = $46,002.

[14] The staff estimates that a compliance clerk spends one hour of time, at $12.77/hour, preparing the report and a compliance attorney spends half an hour of time, at $62.01/hour, reviewing the report.

[15] 410 funds × 2 quarters/year × 1.5 hours/quarter = 1230 hours.

[16] 410 funds × 2 quarters/year × $43.78/quarter = $35,900.

[17] The staff estimates that each hour of a fund board's meeting costs $2000.

[18] 410 funds × 2 quarters/year × 15 minutes/quarter = 205 hours

[19] 410 funds × 2 quarters/year x $500/quarter = $410,000

[20] 2 hours × $62.01/hour = $124.02

[21] These averages take into account the fact that in most years, fund attorneys and boards spend little or no time modifying procedures and in other years, they spend a significant amount of time doing so.

[22] 410 funds × (2 hours by compliance attorney + 15 minutes by board/year) = 922.5 hours.

[23] 410 funds × ($124.02 for compliance attorney time + $500 for board time) = $255,848.

[24] 1025 for pre-transaction reporting + 1025 for post-transaction reporting + 1230 hours for preparing the board report + 205 hours for board review of rule 10f–3 transactions + 922.5 hours for monitoring and revising rule 10f–3 procedures = 4407.5 hours.

[25] $46,002 for pre-transaction reporting + $46,002 for post-transaction reporting + $35,900 for preparing the board report + $410,000 for board review of rule 10f–3 transactions + $255,848 for monitoring and revising rule 10f–3 procedures = $793,752.

of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW, Washington, DC 20549.

Dated: February 7, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3628 Filed 2–13–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–13, SEC File No. 270–27, OMB Control No. 3235–0035.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval. The Code of Federal Regulations citation to this collection of information is the following rule: 17 CFR 240.17a–13 Quarterly Security Counts to be Made by Certain Exchange Members, Brokers, and Dealers.

Rule 17a–13(b) generally requires that at least once each calendar quarter, all registered brokers and dealers physically examine and count all securities held and account for all other securities not in their possession, but subject to the broker-dealer's control or direction. Any discrepancies between the broker-dealer's securities count and the firm's records must be noted and, within seven days, the unaccounted for difference must be recorded in the firm's records. Rule 17a–13(c) provides that under specified conditions, the securities counts, examination and verification of the broker-dealer's entire list of securities may be conducted on a cyclical basis rather than on a certain date. Although Rule 17a–13 does not require filing a report with the Commission, security count discrepancies must be reported on Form X–17a–5 as required by Rule 17a–5. Rule 17a–13 exempts broker-dealers that limit their business to the sale and redemption of securities of registered investment companies and interests or participation in an insurance company separate account and those who solicit accounts for federally insured savings and loan associations, provided that such persons promptly transmit all funds and securities and hold no customer funds and securities.

The information obtained from Rule 17a–13 is used as an inventory control device to monitor a broker-dealer's ability to account for all securities held, in transfer, in transit, pledged, loaned, borrowed, deposited or otherwise subject to the firm's control or direction. Discrepancies between the securities counts and the broker-dealer's records alert the Commission and the Self Regulatory Organizations (''SROs'') to those firms having problems in their back offices.

Because of the many variations in the amount of securities that broker-dealers are accountable for, it is difficult to develop a meaningful figure for the cost of compliance with Rule 17a–13. Approximately 91% of all registered broker-dealers are subject to Rule 17a–13. Accordingly, approximately 6,579 broker-dealers have obligations under the Rule, and the average time it would take each broker-dealer to comply with the Rule is 100 hours per year, for a total estimated annualized burden of 657,900 hours. It should be noted that a significant number of firms subject to Rule 17a–13 have minimal obligations under the Rule because they do not hold securities. It should further be noted that most broker-dealers would engage in the activities required by Rule 17a–13 even if they were not required to do so.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 7, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3629 Filed 2–13–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25413; 812–12474]

Maxim Series Fund, Inc., et al.; Notice of Application

February 8, 2002.

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

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: GW Capital Management, LLC (the ''Manager''), Maxim Series Fund, Inc. (''Maxim'') and Orchard Series Fund (''Orchard'') (Maxim and Orchard each, a ''Fund'' and together, the ''Funds'') request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: Manager, Maxim and Orchard.

Filing Dates: The application was filed on March 9, 2001 and amended on October 5, 2001 and January 14, 2002.

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 March 5, 2002, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC