

any Series in the purchase or sale of any security for its portfolio. In light of the above, applicant believes that its proposal meets the section 6(c) standards.

#### Condition

The Applicant and each Series agree that any order granted under this Application may be conditioned upon no company held in the Series' portfolio nor any affiliate thereof acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-14438 Filed 6-12-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21118; No. 812-9488]

#### Maxim Series Fund, Inc.

June 7, 1995.

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

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

**APPLICANT:** Maxim Series Fund, Inc. ("Fund").

**RELEVANT 1940 ACT SECTION:** Order requested under Sections 6(c) and 17(b) for an exemption from Sections 17(a)(1) and 17(a)(2) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicant seeks an order that would permit the exchange of shares between certain Fund portfolios.

**FILING DATE:** The application was filed on February 21, 1995, and amended on June 5, 1995.

**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 Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 28, 1995, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street,

NW., Washington, DC 20549. Applicant, Maxim Series Fund, Inc., c/o Beverly A. Byrne, Esq., 8515 East Orchard Road, Englewood, Colorado 80111.

**FOR FURTHER INFORMATION CONTACT:** Yvonne M. Hunold, Assistant Special Counsel, or Wendy Friedlander, Deputy Chief, at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

#### Applicant's Representations

1. The Fund is a Maryland corporation registered under the 1940 Act as an open-end, diversified management investment company. The Fund consists of twenty-one investment portfolios, three of which are the subject of this application: (a) Growth Index Portfolio; (b) Value Index Portfolio; and (c) Small-Cap Index Portfolio (collectively, "Portfolios"). Great West Life Assurance Company ("Adviser") serves as the investment adviser to the Fund.

2. Shares of the Portfolios currently are sold in connection with certain tax-qualified insurance contracts to: (a) Future Funds Series Account II, a separate account of Great-West Life & Annuity Insurance Corporation ("GWL&A"); and (b) TNE Series (K) Account, a separate account of The New England Life Insurance Company. Shares of the Portfolio may be offered in the future to other separate accounts of GWL&A or of other insurance companies.

3. The investment objectives of the Portfolios are related to corresponding indices of the Frank Russell Company ("Russell"). The investment objectives of the Value Index Portfolio, the Growth Index Portfolio and the Small-Cap Index Portfolio are to provide investment results, before fees, that correspond, respectively, to the total return of the Russell 1000 Value index, the Russell 1000 Growth Index, and the Russell 2000 Index. Under normal circumstances, a minimum of 65% of each of the Portfolio's net assets will be invested in securities included in the corresponding Russell Index.

4. On May 31, of each year, the Russell 1000 Index (of which the Russell 1000 Growth Index and Russell 1000 Value Index are subsets) and the Russell 2000 Index are reconstituted to reflect changes in the marketplace.<sup>1</sup> Consequently, some stocks previously

included in one Russell index, or its subset index, may thus become part of the other Russell index, or its subset. Following the reconstitution of the Russell indices, a corresponding reconstitution of the Portfolios occurs, on or about June 30 of each year, consistent with each Portfolio's respective investment objectives.

5. The Portfolios thus propose to directly purchase from and sell to each other their respective portfolio securities in private transactions ("Reconstitution Transactions"),<sup>2</sup> as follows:<sup>3</sup>

a. *Growth Index Portfolio:* As a direct result of the reconstitution of the Russell 1000 Growth Index, the Growth Index Portfolio proposes to sell specific portfolio securities, and the Value Index Portfolio or the Small-Cap Index Portfolio simultaneously propose to purchase those same securities, as a direct result of the reconstitution of the Russell 1000 Value Index or the Russell 2000 Index, respectively;

b. *Value Index Portfolio:* As a direct result of the reconstitution of the Russell 1000 Value Index, the Value Index Portfolio proposes to sell specific portfolio securities, and the Growth Index Portfolio or the Small-Cap Index Portfolio simultaneously propose to purchase those same portfolio securities as a direct result of the reconstitution of the Russell 1000 Growth Index or the Russell 2000 Index, respectively; and

c. *Small-Cap Index Portfolio:* As a direct result of the reconstitution of the Russell 2000 Index, the Small-Cap Index Portfolio proposes to sell specific portfolio securities, and the Value Index Portfolio or the Growth Index Portfolio simultaneously propose to purchase those same portfolio securities as a direct result of the reconstitution of the Russell 1000 Value Index or the Russell 1000 Growth Index, respectively.

6. Applicant proposes that cash consideration be paid by one Portfolio to another Portfolio only to the extent of the net difference in the aggregate purchase price of the securities bought or sold between two Portfolios. The remaining consideration will be paid

<sup>2</sup> Applicant represents that the Reconstitution transactions will not include any purchases or sales in which any of the Portfolios are both buyers and sellers of the same Portfolio securities.

<sup>3</sup> Applicant states that the Portfolios also may purchase or sell Portfolio securities as a direct result of the reconstitution of the respective Russell indices that are not being simultaneously sold to or purchased by another Portfolio because either: (i) the newly reconstituted Russell Index contains different stocks than previously were included, or (ii) the Portfolios do not exactly match their corresponding Russell indices. Applicants represent that these sales and purchases are not deemed to be Reconstitution Transactions and, therefore, are not the subject of this application.

<sup>1</sup> The Russell 100 Index and the Russell 2000 Index are subsets of the Russell 3000 Index.

with the prompt delivery of securities valued at current market prices.<sup>4</sup> Applicant states that the Reconstitution Transactions will avoid unnecessary brokerage commissions and other transaction costs of market transactions.

#### Applicant's Legal Analysis

1. Section 17(a) of the 1940 Act prohibits affiliates of a registered investment company, or affiliates of such affiliates acting as principal, from knowingly selling to or purchasing from the registered investment company any security or other property, except under certain circumstances. Applicant states that the Reconstitution Transactions may be prohibited by Section 17(a) because the Fund and each Fund Portfolio may be deemed to be an affiliate of a registered investment company, or an affiliate of such an affiliate, as defined in Section 2(a)(3) of the 1940 Act.

2. Section 17(b) of the 1940 Act provides exemptive relief from Section 17(a) if: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. Rule 17a-7 under the 1940 Act also provides exemptive relief from Section 17(a), provided certain specified conditions are met.

3. Applicant submits that the terms of the proposed transactions satisfy Section 17(b). Applicant represents that the Reconstitution Transactions will be made at the respective portfolio securities' "Current Market Prices," as defined in Rule 17a-7 under the 1940 Act, with the consideration to be paid or received being cash and/or the

delivery of portfolio securities of an equivalent value (based upon those portfolio securities' Current Market Prices).

4. Applicant states that no brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid in connection with any of the Reconstitution Transactions. Applicant further states that the purpose of the Reconstitution Transactions is to enable the Portfolios to avoid incurring unnecessary brokerage expenses and other transaction costs to the ultimate detriment of Contract owners. By effecting the Reconstitution Transactions through exchanges of securities between Portfolios (instead of market transactions through broker-dealers), the Portfolios will enjoy a net cost savings equal to: (a) the amount of brokerage commissions that otherwise would have been paid to such broker-dealers, and (b) any differences in the price paid or received on the purchase or sale of the portfolio securities through a broker-dealer (which would be based on bid and asked prices for reported securities) and the "Current Market Price" that Applicant would use in effecting the Reconstitution Transactions.

5. Applicant states that the amount of savings for 1994 (or any year thereafter) can not be estimated with any degree of certainty because the extent to which the Russell indices will be reconstituted on May 31, 1995 (or any year thereafter) is not yet known. Applicant represents, however, that brokerage commission savings to the Portfolios would be \$0.04 per share for each share transferred in the Reconstitution Transactions (as opposed through a broker-dealer).

6. Applicant represents that each purchase and sale comprising the Reconstitution Transactions will be consistent with the policy of each Portfolio, as recited in the Fund's registration statement and reports filed under the 1940 Act.

7. Applicant states that the Reconstitution Transactions will be effected only when the respective Portfolios independently determine which securities it will purchase and sell, and independently decide: (a) to purchase and sell the same portfolio securities; and (b) that it is more advantageous to that Portfolio to purchase or sell the Portfolio security from or to the other Portfolio, as compared with an open market purchase or sale.

8. Applicant states that the Reconstitution Transactions are consistent with the general purposes of the 1940 Act and do not present any of the issues or abuses that the Act is

designed to prevent. Moreover, Applicant submits that the Reconstitution Transactions will be effected in a manner consistent with the public interest and the protection of investors.

9. Applicant represents that the Reconstitution Transactions will be made in compliance with all of the requirements of Rule 17a-7, except for one element of subparagraph (a) of the Rule. Rule 17a-7(a) requires in connection with certain purchase and sale transactions that there be "no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available." In the Reconstitution Transactions, a portion of the consideration will be Portfolio securities rather than cash. Applicant proposes that cash consideration be paid to a Portfolio from another Portfolio only to the extent the aggregate price of the portfolio securities acquired by a Portfolio from another Portfolio exceeds the aggregate price of the portfolio securities sold by that Portfolio to such other Portfolio. The remaining consideration would be the prompt delivery of Portfolio securities, valued at Current Market Prices, to such other Portfolio.

10. Applicant states that the nature of the proposed transactions does not give rise to the type of potential abuse Rule 17a-7 was designed to guard against. Applicant submits that Rule 17a-7 was designed to permit investment companies to sell securities between themselves at Current Market Prices without necessary incurring costs, including brokerage costs, to the detriment of investors. Applicant states that the Reconstitution Transactions will be effected at Current Market Prices and thus will avoid unnecessary brokerage costs.

11. Applicant represents that the Fund's board of directors, including a majority of the directors who are not interested persons of the Fund, will (i) adopt procedures pursuant to which the Reconstitution Transactions may be effected, which are reasonably designed to provide that all the conditions in paragraphs (a) through (d) of Rule 17a-7 have been complied with, except the condition set forth in paragraph (a) that requires the transaction to be effected for no consideration other than cash, (ii) make and approve such changes as the board deems necessary, and (iii) determine no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures. Additionally, the Fund will (i) maintain and preserve permanently,

<sup>4</sup> For example, on June 30, 1995, the Growth Index Portfolio purchases portfolio securities from the Value Index Portfolio with an aggregate purchase price of \$1 million based on "Current Market Prices," as defined in Rule 17a-7. Simultaneously, the Value Index Portfolio purchases different portfolio securities from the Growth Index Portfolio with an aggregate purchase price of \$1.2 million based on Current Market Prices. Under these circumstances, Applicants propose that the transactions be settled by: (a) the prompt delivery by the Growth Index Portfolio to the Value Index Portfolio of portfolio securities with the aggregate Current Market Value of \$1.2 million, and (b) the prompt delivery by the Value Index Portfolio to the Growth Index Portfolio of the portfolio securities with the aggregate Current Market Value of \$1 million together with \$200,000 in cash.

in an easily accessible place, a written copy of the procedures (and any modifications thereto) described in paragraph (e) of Rule 17a-7, and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years, in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person [portfolio] on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described in paragraph (e)(3) of Rule 17a-7 were made.

12. Applicant therefore submits that the Reconstitution Transactions are, in substance, the type of transactions ordinarily exempted by Rule 17a-7.

13. Applicant also requests relief pursuant to Section 6(c) of the 1940 Act, because the Commission has interpreted Section 17(b) of the 1940 Act as authorizing the granting of exemptive relief from Section 17(a) on a transaction-by-transaction basis only. Applicant requests relief pursuant to Section 6(c) exempting Applicant from Section 17(a) to the extent necessary to permit Applicant to engage in the Reconstitution Transactions each year.

14. Section 6(c) of the 1940 Act provides that the Commission "by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Act] or of any rule or regulation thereunder, 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]."

15. Applicant submits that the exemptions requested under Section 6(c) are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

#### **Applicant's Conditions**

Applicant represents and agrees to the following conditions:

1. Each of the Reconstitution Transactions will be: (a) a purchase or sale, for no consideration other than the delivery of portfolios securities valued at the independent "Current Market Price" (as defined in Rule 17a-7 under the 1940 Act), or, (b) to the extent the aggregate price of the portfolio securities acquired by one Portfolio from another

Portfolio exceeds the aggregate price of the portfolio securities sold by that Portfolio to such other Portfolio, a cash payment for the difference, against prompt delivery of a security for which market quotations are readily available.

2. Each of the Reconstitution Transactions will be effected at the security's independent "Current Market Price," as defined in Rule 17a-7 under the 1940 Act.

3. Each of the Reconstitution Transactions will be consistent with the policy of each of the Portfolios participating in such transactions, as recited in the Fund's registration statement and reports filed under the 1940 Act.

4. No brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid in connection with any of the Reconstitution Transactions.

5. The Fund's board of directors, including a majority of the directors who are not interested persons of the Fund, shall (a) review the terms of the Reconstitution Transactions, the composition of the investment portfolios of the affected Portfolios, and the value (and valuation method) of the investment securities comprising the purchase price in the Reconstitution Transactions; (b) adopt a resolution determining that each of the Reconstitution Transactions are reasonable and fair to the affected portfolios, that the Reconstitution Transactions would not subject any of the affected Portfolios to overreaching, and that each of the Reconstitution Transactions are consistent with the policy of each of the Portfolios participating in such transactions, as recited in the Fund's registration statement and reports filed under the 1940 Act; (c) make and approve such changes as the board deems necessary; and (d) determine at the board meeting next following any Reconstitution Transactions that such Reconstitution Transactions were effected in compliance with such procedures.

6. The Fund agrees that it will maintain and preserve (a) permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition "5", and (b) for a period not less than six years from the end of the fiscal year in which any Reconstitution transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the securities purchased or sold in such transaction, and the information or materials upon which the determinations described in condition "5(d)" were made.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-14439 Filed 6-13-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35807; File No. SR-NSCC-95-03]

#### **Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard**

June 5, 1995.

On March 1, 1995, National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR-NSCC-95-03) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On March 27, 1995, NSCC filed an amendment to the proposed rule change.<sup>2</sup> Notice of the proposal was published in the **Federal Register** on April 14, 1995, to solicit comments from interested persons.<sup>3</sup> No comments were received. As discussed below, this order approves the proposed rule change.

#### **I. Description**

In October 1993, the Commission adopted Rule 15c6-1 under the Act which will become effective June 7, 1995.<sup>4</sup> Rule 15c6-1 establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. The purpose of NSCC's proposed rule change is to amend NSCC's rules to be consistent with Rule 15c6-1 and with a T+3 settlement standard for most securities transactions.

In order to accommodate a T+3 settlement cycle, many of the time frames contained in NSCC's rules are being shortened. These changes include such things as all references to a five day settlement time frame being changed to reflect a three day settlement

<sup>1</sup> 15 U.S.C. § 78s(b) (1988).

<sup>2</sup> Letter from John P. Barry, Associate Counsel, NSCC, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (March 27, 1995).

<sup>3</sup> Securities Exchange Act Release No. 35577 (April 6, 1995), 60 FR 19104.

<sup>4</sup> Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adopting Rule 15c6-1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).