

**SECURITIES AND EXCHANGE
COMMISSION**

[File No. 81-924]

**Application and Opportunity for
Hearing: Charles E. Smith Residential
Realty, Inc.**

July 20, 1995.

Notice is Hereby Given that Charles E. Smith Residential Realty, Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Commission Act of 1934, as amended (the "Exchange Act") for an order exempting applicant from the provisions of Section 16 of the Exchange Act with respect to its ownership of and transactions in units of limited partnership interest of Charles E. Smith Residential Realty L. P.

For a detailed statement of the information presented, all persons are referred to said application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is Further Given that any interested person not later than August 9, 1995 may submit to the Commission in writing its views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such a request, and the issues of fact and law raised by the application which it desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after said date, an order granting application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-18286 Filed 7-25-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 21219;
812-9638]

**Pioneer Winthrop Real Estate
Investment Fund, et al.; Notice of
Application**

July 19, 1995.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Pioneer Winthrop Real Estate Investment Fund ("Pioneer Winthrop Fund"); Pioneer Variable Contracts Trust ("Variable Trust") on behalf of its Real Estate Growth Portfolio series (together with Pioneer Winthrop Fund, the "Funds"); and Pioneering Management Corporation ("PMC").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(a).

SUMMARY OF APPLICATION: Apollo Real Estate Advisors, L.P. ("Apollo") has agreed to acquire W.L. Realty, L.P. ("Realty LP"), including the investment advisory business of its indirect subsidiary Winthrop Advisors Limited Partnership ("WALP"), from The Nomura Securities Co. ("Nomura") and certain principals of Realty L.P. The reorganization will result in the assignment, and thus the termination, of existing investment advisory contracts of the applicant investment companies. Applicants seek an order to permit the implementation, without shareholder approval, of interim investment advisory contracts during a period of up to 120 days following July 3, 1995. The order also will permit the applicant investment adviser to receive from the applicant investment companies fees earned under the interim investment advisory contracts following approval by the investment companies' shareholders.

FILING DATES: The application was filed on June 20, 1995 and amended on July 19, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 14, 1995, 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 such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth St. NW., Washington, DC 20549. Applicants, 60 State St., Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT:

Marianne H. Khawly, Staff Attorney, at (202) 942-0562, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds, each a Delaware business trust, are registered open-end management investment companies. Pioneer Winthrop Fund continuously offers its shares for sale to the general investing public. Real Estate Growth Portfolio continually offers its shares for sale primarily to insurance company segregated accounts that fund variable annuity and life insurance contracts.

2. The Funds each have entered into an investment advisory agreement with Pioneer Winthrop Associates ("PWA"), a general partnership and registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"), under which PWA provides advisory and management services to the Funds (the "Advisory Agreements"). Also, the Funds each have entered into subadvisory agreements with PMC and WALP, (the "Subadvisory Agreements," and together with the Advisory Agreements, the "Prior Agreements"), each a registered investment adviser under the Advisers Act.

3. PMC currently serves as investment adviser to each of the mutual funds, other than the Funds, in the Pioneer complex of mutual funds. PMC is a wholly-owned subsidiary of The Pioneer Group, Inc. ("PGI"). WALP is a wholly-owned subsidiary of Winthrop Financial Associates ("WFA"). PGI and WFA each own 50% of the partnership interests of PWA.

4. WFA's indirect parent company, Realty LP, is a majority owned subsidiary of Nomura, an international brokerage and financial services firm. The remaining minority interests in Realty LP are owned by Arthur J. Halleran and Stephen G. Kasnet, (collectively, the "Management Investors"), principals of WFA. The Management Investors serve as trustees

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 such agreement will terminate by its terms.¹

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

¹ The PMC Subadvisory Agreements terminate by their terms upon the termination of the Advisory Agreements.

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.

3. The Funds will hold meetings of shareholders to vote on approval of the Interim Agreements and new investment advisory agreements, on or before the 120th day following July 3, 1995.

4. PMC will bear the cost of preparing and filing this application and the costs relating to the solicitation of the approvals of the Funds' shareholders of the Interim Agreements necessitated by the Reorganization.

5. PMC will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds under the Interim Agreements will be at least equivalent, in the judgment of the respective Boards, including a majority of the Independent Directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services under the Interim Agreements, PMC will apprise and consult the Boards of the affected Funds to assure that such Boards, including a majority of the Independent Directors, are satisfied that the services provided by PMC will not be diminished in scope or quality.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35990; File No. SR-NASD-95-25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Mediation of Disputes

July 19, 1995.

On June 6, 1995,¹ the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")², and Rule 19b-4 thereunder.³ The proposed rule change amends the Code of

Arbitration Procedure ("Code")⁴ by adding a new Part IV to set forth rules to govern the administration of mediation proceedings ("Mediation Rules") and by amending Sections 37, 43 and 44 of the Code⁵ to add fee and other provisions relating to the administration of mediation proceedings.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35830, June 9, 1995) and by publication in the **Federal Register** (60 FR 31522, June 15, 1995). No comment letters were received. This order approves the proposed rule change.

More than 5,500 arbitration cases were filed with the NASD in calendar year 1994, which represents 82 percent of all securities arbitrations filed in all arbitration for a combined (including the American Arbitration Association) and 86 percent of all arbitrations filed with self-regulatory organizations. The volume of arbitration cases has been growing dramatically since the U.S. Supreme Court recognized the enforceability of predispute arbitration agreements with respect to claims arising under the Act⁶ and under the Securities Act of 1933.⁷

As the volume of arbitrations has increased, cases have grown more complex and time-consuming such that some of the advantages of arbitration as a low cost and swift alternative to litigation are disappearing. This has led to interest in other forms of alternative dispute resolution that may be less expensive than adversarial proceedings in arbitration or in court. A goal of mediation is to explore and come to a settlement of an outstanding dispute without resort to adversarial adjudication.

Amendments to Existing Rules

Record of Sessions. Section 37 of the Code has been amended by adding a new paragraph (b) to prohibit keeping a verbatim record of any mediation session conducted pursuant to the proposed rules. The NASD believes that a verbatim record is not consistent with the methods of mediation: a free-flowing and confidential exchange of views, opinions, proposals and admissions.

Fees. Sections 43 and 44 of the Code have been amended to include fees for NASD mediation sessions. The administrative fees of the NASD set forth in new Subsection 43(i) and 44(j) for administering a mediation will be charged only when there is no Association arbitration pending. When there is no arbitration pending, the NASD will charge each party \$150 under new Subsection 43(i) to administer the mediation of a public customer matter and will charge each party \$250 under new Subsection 44(j) to administer the mediation of an industry matter.

The fees will be assessed for each matter submitted to mediation. Pursuant to new Section 51, discussed below, a matter is deemed submitted to mediation when the Director of Mediation⁸ has received an executed mediation Submission Agreement from all parties.⁹

In addition, new Subsections 43(j) and 44(k) obligate the parties to pay all of the mediator's charges, including travel and other expenses. The Submission Agreement will set forth the mediator's charges and these charges will be apportioned equally among the parties unless they agree otherwise. The NASD will estimate initially the mediator's charges based on the anticipated length of the session or sessions. The parties will be required to deposit their proportional share of such estimated charges with the NASD prior to the first mediation session.

The NASD's standard mediator charges will be \$150 per hour, although the parties may agree to pay different charges for a particular mediator. The NASD intends to make its best efforts to make mediators available at the specified hourly rate; however, some qualified mediators may decline to serve unless compensated at a higher rate.

Finally, the mediator's hourly fee for joint sessions (except for the first session) and separate sessions will be assessed for each half hour or portion thereof. In addition, the mediator's hourly rate for separate meetings will be apportioned equally among all parties without regard to the actual amount of time each party has spent with the mediator because all parties should benefit equally from the mediator's efforts in meeting with each party even if the mediator spends more time with one than the other.

¹ The NASD amended the proposed rule change subsequent to its original filing on May 19, 1995. Amendment No. 1 was a minor technical amendment, the text of which may be examined in the Commission's Public Reference Room. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC (June 2, 1995).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ NASD Manual, Code of Arbitration Procedure, (CCH) ¶¶3701 *et seq.*

⁵ NASD Manual, Code of Arbitration Procedure, Part III, Secs. 37, 43 and 44, (CCH) ¶¶3737, 3743, 3744.

⁶ *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987).

⁷ *Rodriguez de Quijas v. Shearson/American Express, Inc.* 490 U.S. 477 (1989).

⁸ New Section 50 provides for the appointment of a Director of Mediation ("Director") to administer mediations. See *infra* text accompanying n. 10.

⁹ The NASD is developing a standard form mediation Submission Agreement. A copy of the Submission Agreement will be provided to all parties.