

**SECURITIES AND EXCHANGE COMMISSION****[Investment Company Act Release No. 26173; 812-12940]****Matrix Capital Group, Inc., et al.; Notice of Application September 4, 2003.****AGENCY:** Securities and Exchange Commission ("Commission").**ACTION:** Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

*Summary of the Application:* Matrix Unit Trust ("Matrix Trust"), Matrix Capital Group, Inc. ("Matrix"), and any registered unit investment trusts ("UITs") organized in the future and sponsored by Matrix, or an entity controlling, controlled by or under common control with Matrix (collectively, the "Depositor"), and their respective series (together with the Matrix Trust, the "Trusts", and each series of the Trusts, a "Series"), request an order to permit the Trusts to acquire shares of registered management investment companies and UITs both within and outside the same group of investment companies.

*Applicants:* Matrix Trust and Matrix.

*Filing Dates:* The application was filed on March 18, 2003, and amended on August 29, 2003.

*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 September 29, 2003, 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, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, 666 Fifth Avenue, 14th Floor, New York, New York 10103.

**FOR FURTHER INFORMATION CONTACT:** John Yoder, Attorney-Adviser, at (202) 942-0544, or Todd Kuehl, Branch Chief, at

(202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

**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, 450 Fifth Street, NW., Washington, DC 20549-0102, (202) 942-8090.

**Applicants' Representations**

1. Matrix Trust is a UIT registered under the Act. Each Series will be a series of a Trust, each a UIT which is or will be registered under the Act. Matrix, a New York corporation, is registered under the Securities Exchange Act of 1934 as a broker-dealer.

2. Applicants request relief to permit the Series to invest in (a) registered investment companies that are part of the same "group of investment companies" (as that term is defined in section 12(d)(1)(G) of the Act) as the Trust ("Affiliated Funds"), and (b) registered investment companies that are not part of the same group of investment companies as the Trust ("Unaffiliated Funds," together with the Affiliated Funds, the "Funds"). The Unaffiliated Funds may include UITs ("Unaffiliated Underlying Trusts") and open-end or closed-end management investment companies ("Unaffiliated Underlying Funds"). Certain of the Unaffiliated Underlying Trusts or Unaffiliated Underlying Funds may be "exchange-traded funds" that are registered under the Act as UITs or open-end management investment companies and have received exemptive relief to sell their shares on a national securities exchange at negotiated prices.<sup>1</sup>

3. Applicants state that the requested relief will benefit unitholders by providing investors with a professionally selected, diversified portfolio of investment company shares through a single investment vehicle.

**Applicants' Legal Analysis****A. Section 12(d)(1)**

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other

investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end management investment company.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company or UIT acquired by a registered UIT if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met. Applicants state that they may not rely on section 12(d)(1)(G) because a Series will invest in Unaffiliated Funds in addition to Affiliated Funds.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit a Series to acquire shares of a Fund and to permit a Fund to sell shares to a Series beyond the limits set forth in sections 12(d)(1)(A), (B), and (C).

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

5. Applicants state that the proposed arrangement will not result in undue influence by a Series or its affiliates over Funds. To limit the control that a Series may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Depositor, the Series, and certain affiliates (individually or in the aggregate) from controlling an

<sup>1</sup> All Trusts that currently intend to rely on the requested order are named as applicants. Any other Trust that relies on the order in the future will comply with the terms and conditions of the application.

Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over Unaffiliated Funds, applicants propose conditions 2 through 6, stated below, to preclude a Series and its affiliated entities from taking advantage of an Unaffiliated Fund with respect to transactions between the entities and to ensure that transactions will be on an arm's length basis.

6. As an additional assurance that an Unaffiliated Underlying Fund understands the implications of an investment by a Series under the requested order, prior to a Series' investment in an Unaffiliated Underlying Fund in excess of the limit in Section 12(d)(1)(A)(i), the Series and Unaffiliated Underlying Fund will execute an agreement stating that the board of directors of the Unaffiliated Underlying Fund and the investment adviser to the Unaffiliated Underlying Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that an Unaffiliated Fund may choose to reject an investment from the Series.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that a condition to the order would provide that any sales charges and/or service fees (as those terms are defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rules")) charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules. In addition, the trustee to a Series ("Trustee") will waive or offset fees otherwise payable by the Series in an amount at least equal to any compensation (including fees paid pursuant to a plan adopted by an Unaffiliated Underlying Fund under rule 12b-1 under the Act ("12b-1 Fees")) received by the Depositor or Trustee, or an affiliated person of the Depositor or Trustee, from an Unaffiliated Fund in connection with the investment by a Series in the Unaffiliated Fund.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A). Applicants also represent that a Series' prospectus and sales literature will contain concise, "plain English" disclosure designed to inform investors of the unique characteristics of the trust of funds structure, including, but not

limited to, its expense structure and the additional expenses of investing in Funds.

#### *B. Section 17(a)*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Series and Affiliated Funds might be deemed to be under the common control of the Depositor or an entity controlling, controlled by, or under common control with the Depositor. Applicants also state that a Series and a Fund might become affiliated persons if the Series acquires more than 5% of the Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent a Fund from selling shares to and redeeming shares from a Series.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable 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 involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if 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.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Funds will be based on the net asset values of the Funds. Applicants state that the

proposed arrangement will be consistent with the policies of each Series and Fund, and with the general purposes of the Act.

#### **Applicants' Conditions**

Applicants agree that the requested order will be subject to the following conditions:

1. (a) The Depositor, (b) any person controlling, controlled by, or under common control with the Depositor, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act sponsored or advised by the Depositor or any person controlling, controlled by, or under common control with the Depositor (collectively, the "Group") will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, the Group will vote its shares in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares.

2. A Series and its Depositor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a "Series Affiliate") will not cause any existing or potential investment by the Series in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Series or a Series Affiliate and the Unaffiliated Fund or its investment adviser, sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities.

3. Once an investment by a Series in the securities of an Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, the board of directors of the Unaffiliated Underlying Fund, including a majority of the disinterested directors, will determine that any consideration paid by the Unaffiliated Underlying Fund to a Series or a Series Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and

(c) does not involve overreaching on the part of any person concerned.

4. No Series or Series Affiliate will cause an Unaffiliated Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is the Depositor or a person of which the Depositor is an affiliated person (each an "Underwriting Affiliate"). An offering during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an "Affiliated Underwriting."

5. The board of directors of an Unaffiliated Underlying Fund, including a majority of the disinterested directors, will adopt procedures reasonably designed to monitor any purchases by the Unaffiliated Underlying Fund of securities in Affiliated Underwritings once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of directors will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Series in shares of the Unaffiliated Underlying Fund. The board of directors will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from Underwriting Affiliates have changed significantly from prior years. The board of directors shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

6. An Unaffiliated Underlying Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period not less than 6 years from the end of the

fiscal year in which any purchase from an Affiliated Underwriting occurred, the first 2 years in an easily accessible place, a written record of each purchase made once an investment by a Series in the securities of an Unaffiliated Underlying Fund exceeded the limits of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

7. Prior to an investment in an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), the Series and the Unaffiliated Underlying Fund will execute an agreement stating, without limitation, that the board of directors of the Unaffiliated Fund and the investment adviser to the Unaffiliated Underlying Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), a Series will notify the Unaffiliated Underlying Fund of the investment. At such time, the Series also will transmit to the Unaffiliated Underlying Fund a list of the names of each Series Affiliate and Underwriting Affiliate. The Series will notify the Unaffiliated Underlying Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Series will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period not less than 6 years from the end of the fiscal year in which any investment occurred, the first 2 years in an easily accessible place.

8. The Trustee will waive or offset fees otherwise payable by a Series in an amount at least equal to any compensation (including 12b-1 Fees) received by the Depositor or Trustee, or an affiliated person of the Depositor or Trustee, from an Unaffiliated Fund in connection with the investment by a Series in the Unaffiliated Fund.

9. Any sales charges and/or service fees (as those terms are defined in Rule 2830 of the NASD Conduct Rules) charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

10. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-23050 Filed 9-9-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26172; 812-12895]

### ISI Strategy Fund, Inc., et al.; Notice of Application September 4, 2003.

**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(f)(1)(A) of the Act.

*Summary of Application:* The requested order would permit ISI Strategy Fund, Inc. ("Fund") not to reconstitute its board of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for Los Angeles Capital Management and Equity Research, Inc. ("LA Capital") to rely upon the safe harbor provisions of section 15(f).

*Applicants:* The Fund, International Strategy & Investment Inc. ("ISI") and LA Capital.

*Filing Dates:* The application was filed on October 15, 2002 and amended on September 2, 2003.

*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 September 29, 2003, 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 20549-0609; Applicants, c/o R. Alan Medaugh, ISI Strategy Fund, Inc., 535 Madison Avenue, New York, NY 10022.

**FOR FURTHER INFORMATION CONTACT:** Jean E. Minarick, Senior Counsel, at (202)