

Adviser currently renders to the Partnership. In return for the Adviser's services, the Fund will pay a management fee to the Adviser, on a monthly basis, not to exceed 1.5% per annum of the Fund's net asset value.

9. The management fees for the Fund will not exceed the maximum fees currently paid by the limited partners in the Partnership. Applicants expect that other Fund expenses will generally be higher as a percentage of net asset value than the expenses of the Partnership. This is primarily because of the increased costs of operating a registered investment company and complying with various additional regulatory requirements and industry practices. The Adviser will, however, place a limit on the annual expenses of the Fund through the end of the first year of operation at 2.25%. In addition, the Fund, unlike the Partnership, imposes a 1% withdrawal fee upon redemptions.

10. The effect of the Exchange will be to establish the Trust as a successor investment vehicle to the Partnership. The Exchange will permit partners to pursue, as shareholders of the Trust, substantially the same investment objective and policies they were expecting from the partnership without sacrificing the pass-through tax features of the Partnership. In addition, shareholders of the Trust will be able to purchase and redeem shares on each business day, as opposed to only once per month as is currently provided under the Partnership Agreement.

11. The Board of Trustees and Mr. Driehaus as General Partner of the Partnership have considered the desirability of the Exchange from the respective points of view of the Trust and the Partnership, have approved the Exchange, and concluded that: (i) The terms of the Exchange meet the criteria contained in section 17(b) of the Act; (ii) the Exchange is desirable as a business matter from the respective points of view of the Trust and the Partnership; (iii) the Exchange is in the best interests of the Trust and the Partnership; (iv) the Exchange is reasonable and fair, does not involve overreaching, and is consistent with the policies of the Act; (v) the Exchange is consistent with the policies of the Trust and the Partnership; and (vi) the interests of existing partners of the Partnership will not be diluted as a result of the Exchange. Currently, the Board has only one member, and this person is an "interested person" (as defined in the Act) of the Trust. As a condition of the Exchange, the Agreement and Plan of Exchange must be approved by the Board, including a majority of the independent trustees, at such time as it

has a majority of independent trustees. The Exchange will not be effected until the Trust and the Partnership have received a favorable opinion of counsel with respect to the tax consequences of the Exchange and the SEC has issued the requested order.

#### Applicants' Legal Analysis

1. Section 17(a) prohibits affiliated persons of a registered investment company, or affiliated persons of such persons, from selling to or purchasing from such company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" as, among other things, any person directly or indirectly controlling, controlled by, or under common control with, such other person. The partnership is an affiliated person of an affiliated person of the Trust because Mr. Driehaus is the owner of the adviser to the Trust, Mr. Driehaus is the general partner of the Partnership, and Mr. Driehaus will provide the initial "seed" capital investment in the Trust. As a result, the proposed Exchange may be deemed to be prohibited under section 17(a) of the Act.

2. Section 17(b) of the Act authorizes the Commission to exempt any person from one or more of the provisions of Section 17(a) if evidence establishes that (1) the terms of the 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; (2) the proposed transaction is consistent with the policy of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the Act.

3. The terms of the Exchange should be considered reasonable and fair to the Partnership, to the Trust, and to the limited partners who, with Mr. Driehaus, will be the initial shareholders of the Fund, and should not be considered to involve overreaching on the part of any applicant for the following reasons:

(a) The investment objective and policies of the Fund are substantially similar to that of the Partnership.

(b) No brokerage commission, fee or other enumeration will be paid in connection with the Exchange.

(c) The Exchange will result in no gain or loss being recognized by partners of the Partnership. The partners of the Partnership will become investors in an entity that offers greater liquidity and other advantages, without immediate tax consequences and without having incurred transaction and brokerage charges in order to do so.

(d) A majority of the members of the Board, including a majority of the independent trustees, and the general partner of the Partnership will have approved the Exchange.

4. Applicants believe that the terms of the proposed Exchange are consistent with the provisions, policies and purposes of the Act in that they are reasonable and fair to all parties, do not involve overreaching, and are consistent with the investment policies of each of the applicants. Accordingly, the applicants submit that the terms of the Exchange are consistent with the requirements of section 17(b) of the Act.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 96-20455 Filed 8-9-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37529; File No. SR-Amex-96-30]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to a One-Year Extension of the Exchange's Pilot Program for Specialists in Portfolio Depository Receipts and Investment Trust Securities to Participate in the After-Hours Trading Facility and to Extend the Pilot Program to Index Fund Shares**

August 6, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 31, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The text of the proposed rule change is available at the Amex and at the Commission.

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

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange seeks a one year extension of the pilot program permitting specialists in Portfolio Depositary Receipts ("PDRs") and investment trust securities listed pursuant to Section 118B of the Exchange's Company Guide<sup>2</sup> to participate in the After-Hours Trading ("AHT") facility to "clean-up" order imbalances and to effect closing price coupled orders.<sup>3</sup> The Exchange also seeks to extend the pilot program to Index Fund Shares.<sup>4</sup>

<sup>2</sup> The Exchange currently lists two Portfolio Depositary Receipts, viz., Standard and Poor's Depositary Receipts on the S&P 500 and MidCap Indexes ("SPDRs"); and two investment trust securities pursuant to Section 118B of the Exchange's Listing Guidelines: LOR Index Trust SuperUnits and LOR Money Market SuperUnits.

<sup>3</sup> According to the Exchange, there was no trading volume in the AHT for SPDRs and investment trust securities from June 1995 to June 1996. The Exchange, nevertheless, is optimistic that there could be after hours trading in these securities (particularly if SPDRs could be used as the cash component of an exchange for physical transaction). The Commission notes that in the last approval order extending the pilot, the Commission requested that the Exchange submit a report describing its experience with the pilot program. See Securities Exchange Act Release No. 36123 (Aug. 18, 1995), 60 FR 44519 (Aug. 28, 1995) (extending Amex's pilot program permitting specialists to participate in the After-Hours Trading Facility in PDRs and investment trust securities until August 29, 1996). According to the Exchange, it has not submitted such a report because there has been no trading in the AHT for SPDRs and investment trust securities.

<sup>4</sup> The Exchange currently lists 16 Index Fund Shares, which are commonly referred to as WEBS<sup>sm</sup>. WEBS are shares issued by an open-end management investment company that seek to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. The Exchange currently lists WEBS based on the following Morgan Stanley Capital International ("MSCI") indices: MSCI Australia Index; MSCI Austria Index; MSCI Belgium Index; MSCI Canada Index; MSCI France Index; MSCI Germany Index;

The Exchange believes that extension of the Exchange's pilot program to permit specialists in PDRs, investment trust securities and Index Fund Shares to participate in the AHT facility in order to "clean-up" order imbalances and effect closing price coupled orders would benefit investors by providing additional liquidity to the listed cash market for derivative securities based upon well known market indexes. The market price of these securities is based upon transactions largely effected in markets other than the Amex. (In the case of Index Fund Shares, the market price of these securities is based exclusively on transactions occurring outside the Amex.) The specialist in the Amex listed derivatives has no unique access to market sensitive information regarding the market for the underlying securities or closing index values. The Exchange, therefore, believes that specialist participation in the AHT facility in PDRs, investment trust securities and Index Fund Shares in the manner previously approved by the Commission does not raise any market integrity issues.<sup>5</sup> In addition, should a customer not care for an execution at the closing price, the rules of the Exchange's AHT facility permit cancellation of an order up to the close of the AHT session at 5:00 p.m. (Orders in the AHT facility are not executed until the 5:00 p.m. close of the After-Hours session.) A customer, therefore, has approximately 40 minutes to determine if an execution at the closing price suits its needs, and may cancel its order if it believes that the closing price does not suit its objectives.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) in particular in that it is designed to prevent fraudulent manipulative acts and practices, promote just and equitable principles of

MSCI Hong Kong Index; MSCI Italy Index; MSCI Japan Index; MSCI Malaysia Index; MSCI Mexico Index; MSCI Netherlands Index; MSCI Singapore (Free) Index; MSCI Spain Index; MSCI Sweden Index; MSCI Switzerland Index; and MSCI United Kingdom Index. (See SR-AMEX-95-43.)

<sup>5</sup> The Commission notes that as in the original pilot program, specialists in PDRs, investment trust securities, and Index Fund Shares may participate in a coupled closing price order as long as the other side of the order is not for an account in which a member or member organization has a direct or indirect interest. Moreover, as with the original pilot program, the limit orders for PDRs, investment trust securities, and Index Fund Shares may not migrate from the specialist's limit order book to the AHT facility in order to help prevent manipulation or misuse of specialists' information regarding which limit orders are eligible for execution in the AHT facility. See Securities Exchange Act Release No., 36123, *supra* note 3.

trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from July 31, 1996, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(e)(6) thereunder.<sup>7</sup> Therefore, the pilot program will be extended until August 29, 1997.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(e)(6).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-96-30 and should be submitted by September 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 96-20456 Filed 8-9-96; 8:45 am]

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[Release No. 34-37528; File No. SR-NASD-95-61]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Extension of Public Comment Period for Proposed Rule Change**

August 5, 1996.

On December 22, 1995,<sup>1</sup> the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The NASD proposes to amend NASD Rules 2820 and 2830 to revise existing rules applicable to the sale of investment company securities and establish new rules applicable to the sale of variable contracts.

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 37374, June 26, 1996) and by publication in the Federal Register (61 FR 35822, July 8, 1996).

The Commission has been requested to extend the time period for public comment on the proposed rule change.<sup>2</sup>

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> On June 14, 1996, the NASD filed Amendment No. 1 with the Commission. Amendment No. 1 addresses the relationship of the proposed rule change to industry initiatives concerning compensation practices, expands the scope of the proposed rule change to govern all sales targets, whether or not previously specified and replaces the term "variable contract securities" with the term "variable contract." See Letter from John M. Ramsay, Deputy General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, SEC (June 14, 1996).

<sup>2</sup> By letter dated August 5, 1996 the NASD has consented to an extension of the comment period.

The Commission hereby extends the period for public comment on the proposed rule change until August 19, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

Jonathan G. Katz,  
Secretary.

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[Release No. 34-37523; File No. SR-PTC-96-04]

**Self-Regulatory Organizations; The Participants Trust Company; Notice of Filing of Proposed Rule Change Relating to the Elimination of Prefunding Requirements for Intraday Free Retransfers**

August 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 2, 1996, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-PTC-96-04) as described in Items I, II, and III below, which Items have been prepared primarily by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change will amend PTC's rules to eliminate the requirement that participants prefund free redeliveries ("free redeliveries") involving securities that were received by a participant versus payment that same day.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B)

and (C) below, of the most significant aspects of such statements.<sup>2</sup>

**(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

The purpose of the proposed rule change is to amend PTC's rules to eliminate the requirement that participants must have cash on deposit ("optional deposits") with PTC equal to the original contract value for securities that are received the same day versus payment prior to making an intraday free redelivery of such securities. These optional deposits are commonly referred to as "prefundings."

The requirement that participants prefund intraday free redeliveries was added to PTC's rules by MBS Clearing Corporation ("MBSCC"), predecessor to PTC.<sup>3</sup> The purpose of the prefunding requirement was to support the original deliverer's security interest ("DSI") and the default provisions which permitted PTC to reverse (*i.e.*, unwind) securities deliveries to achieve settlement, both of which were added to PTC's rules at the same time.<sup>4</sup> Both the DSI and the unwind procedures subsequently have been eliminated from the PTC rules and have been replaced with the participant's intraday collateral lien ("PICL").<sup>5</sup>

The PICL, which can be exercised only if PTC is insolvent and fails to achieve settlement, is granted to those participants with a net credit balance

<sup>2</sup> The Commission has modified the text of the summaries prepared by PTC.

<sup>3</sup> In 1988, MBSCC proposed a rule change to require its participants to prefund intraday free transfers. Securities Exchange Act Release No. 26101 (September 22, 1988), 53 FR 37895 [File No. SR-MBS-88-14] (notice of filing of proposed rule change). Subsequently, the order granting PTC's registration as a clearing agency incorporated the proposed rule change stating that PTC's rules were essentially identical to MBSCC's rules including the most recently proposed rule changes. Securities Exchange Act Release No. 26671 (March 31, 1989), 54 FR 13266, [File No. 600-25] (order granting registration as a clearing agency and statement of reasons).

<sup>4</sup> PTC's rules originally provided that securities delivered versus payment (*i.e.*, held in a participant's transfer account) were held by PTC pending settlement subject to the DSI granted to the original delivering participant. If securities were thereafter redelivered free from a transfer account, the secured party would lose its collateral unless prefunding served as proceeds of that collateral. Accordingly, participants that made a free delivery of securities subject to a DSI were required to have cash at least equal to the original contract value of the securities in the form of an optional deposit to the participants fund.

<sup>5</sup> For a more complete discussion of PTC's reasons for removing the DSI and the unwind procedures, refer to Securities Exchange Act Release No. 34701 (September 22, 1994), 59 FR 49730 [File No. SR-PTC-94-03] (order approving proposed rule change).

See letter from John M. Ramsay, Deputy General Counsel, NASD Regulation, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, Commission.

<sup>3</sup> 17 CFR 200.30-3(a)(12).

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