

Form Nos.	Annual responses	Time (minutes)	Burden (hours)
Total	270,900	27,921

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97-32490 Filed 12-11-97; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22927; 812-10704]

Diamonds Trust, DJIA Trust Receipts Series, PDR Services Corporation and ALPS Mutual Funds, Inc.; Notice of Application

December 5, 1997.

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

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 4(2), 14(a), 22(d), 24(d), and 26(a)(2)(C) of the Act and rule 22c-1; under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a) (1) and (2) of the Act; and under rule 17d-1 to permit certain joint transactions.

APPLICANTS: Diamonds Trust, DJIA Trust Receipts Series (the "Trust"), PDR Services Corporation (together with its "successors in interest"¹ and with any person directly or indirectly controlling, controlled by, or under common control with, PDR Service Corporation, the "Sponsor") and ALPS Mutual Funds, Inc. (the "Distributor").

SUMMARY OF APPLICATION: Applicants request an order that would (i) permit the Trust, a unit investment trust whose portfolio will consist of the component stocks of the Dow Jones Industrial Average ("DJIA"), to issue non-

redeemable securities ("DJIA Trust Receipts"); (ii) permit secondary market transactions in DJIA Trust Receipts at negotiated prices; (iii) permit dealers to sell DJIA Trust Receipts to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the "Securities Act"); (iv) permit certain expenses associated with the creation and maintenance of the Trust to be borne by the Trust rather than the Sponsor; (v) exempt the Sponsor from the Act's requirement that it purchase, or place with others, \$100,000 worth of DJIA Trust Receipts; (vi) permit affiliated persons of the Trust to deposit securities into, and receive securities from, the Trust in connection with the purchase and redemption of DJIA Trust Receipts; and (vii) permit the Trust to reimburse the Sponsor and/or the American Stock Exchange, Inc. ("AMEX") for payment of an annual licensing fee to Dow Jones & Company, Inc. ("Dow Jones").

FILING DATES: The application was filed on June 17, 1997, and an amendment to the application was filed on December 3, 1997.

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 December 29, 1997, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o James F. Duffy, Executive Vice President and General Counsel, American Stock Exchange, Inc., 86 Trinity Place, New York, NY 10006.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942-0526, or Nadya B. Roytblat, Assistant Director, 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, 450 Fifth Street, N.W., Washington D.C. 20549 (tel. (202) 942-8090).

Applicant's Representations

1. The Trust is a unit investment trust ("UIT") organized under the laws of the state of New York. The Sponsor is a wholly-owned subsidiary of AMEX. State Street Bank and Trust Company will act as trustee of the Trust ("Trustee"). The Distributor, a registered broker-dealer, will serve as underwriter of the DJIA Trust Receipts on an agency basis.

2. The Trust will hold a portfolio of securities consisting of all of the component common stocks of the DJIA. The DJIA is a price-weighted index of thirty stocks. Issuers of the component stocks are all leaders in their respective industries, and the component stocks represent approximately one-fifth of the market value of all U.S. stocks. Applicants represent that the DJIA is the oldest continuous barometer of the U.S. stock market, and the most widely quoted indicator of U.S. stock market activity. DJIA Trust Receipts, units of beneficial interest in the Trust, are designed to provide investors with an instrument that closely tracks the DJIA, that trades like a share of common stock, and pays periodic dividends proportionate to those paid by the portfolio of stocks held by the Trust.² Applicants believe that DJIA Trust Receipts will afford significant benefits in the public interest. Applicants expect the Trust to be able to track the DJIA more closely than certain other index products and, unlike open-end index funds, trade at negotiated prices throughout the business day. Applicants also state that DJIA Trust Receipts will compete with comparable products available on foreign exchanges and attract capital to the U.S. equity market.

3. The composition of the Trust's portfolio will be adjusted periodically to conform to changes in the DJIA resulting from corporate actions such as stock

¹ "Successors in interest" is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization, e.g., a partnership or a corporation.

² The Trust will make monthly distributions of an amount representing the dividends accumulated on portfolio securities during each month, net of fees and expenses.

splits or changes in the identity of the DJIA component stocks.³ All adjustments to the Trust's portfolio will be made by the Trustee as set forth in the trust agreement and will be nondiscretionary.

4. The Trustee will be paid a "Trustee's Fee" ranging between 11/100 of 1% to 15/100 of 1% of the Trust's net asset value ("NAV") on an annualized basis. The Trustee's Fee will be adjusted to reflect the costs that the Trustee incurs in connection with the issuance and redemption of DJIA Trust Receipts (as discussed below). The Sponsor and the AMEX are paying the Trust's organizational expenses. The Trust will reimburse the Sponsor and the AMEX for these expenses ratably over a five-year period. Should the Trust terminate prior to its fifth anniversary, the remaining unamortized organizational expenses will continue to be borne by the Sponsor and the AMEX, and will not be charged against the Trust. The Trust also will reimburse the Sponsor and/or the AMEX up to a maximum of 20 basis points of the Trust's NAV on an annualized basis, for the following expenses: (i) annual licensing fees for the use of the "DJIA" trademark; (ii) federal and state annual registration fees for the issuance of DJIA Trust Receipts; and (iii) expenses of the Sponsor relating to the marketing of DJIA Trust Receipts and the Trust (including, but not limited to, related legal, consulting, and advertising expenses). The Sponsor will pay the Distributor a flat annual fee. The Sponsor will not seek reimbursement for payment of this annual fee from the Trust without obtaining prior exemptive relief from the Commission.

5. DJIA Trust Receipts will be issued in aggregations of 50,000 ("Creation Units"). The price of each Creation Unit will be approximately \$4,007,000 (based on the value of the DJIA on November 28, 1997). To be eligible to purchase a Creation Unit, an investor must either be a participant in the Continuous Net Settlement ("CNS") System of the National Securities Clearing Corporation ("NSCC"), or a Depository Trust Company ("DTC") participant, but is not required to be an AMEX member. An investor wishing to purchase a Creation Unit from the Trust will have to transfer to the Trust a "Portfolio Deposit" consisting of: (i) a portfolio of securities that is substantially similar in composition and weighting to the DJIA component securities ("Index Securities"); (ii) a cash payment equal to

the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, net of expenses and liabilities; and (iii) a cash payment or credit to equalize any differences between the Portfolio Deposit Amount and the NAV per Creation Unit (which may be required, for example, if a portion of the Trust's assets is held in cash).⁴ An investor making a Portfolio Deposit will be charged a service fee ("Transaction Fee"), paid to the Trustee, to defray the Trustee's costs in processing securities deposited into the Trust.⁵

6. Orders to purchase Creation Units will be placed with the Distributor, who will be responsible for transmitting the orders to the Trustee.⁶ The Distributor will maintain records of these orders, issue confirmations of acceptance, and issue delivery instructions to the Trustee to implement the delivery of DJIA Trust Receipts. The Distributor will be responsible for delivering prospectuses to purchasers of the

⁴ At the close of the market on each business day, the Trustee will calculate the NAV of the Trust and then divide the NAV by the number of outstanding DJIA Trust Receipts in Creation Unit size aggregations, resulting in an NAV per Creation Unit. The Trustee will then calculate the required number of shares of the Index Securities, and the amount of cash, comprising a Portfolio Deposit for the following business day. The Sponsor will make available a list of the names of each of the Index Securities in the current Portfolio Deposit and the required number of shares. The cash equivalent of an Index Security may be included in the cash component of a Portfolio Deposit in lieu of the Security if (i) the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for inclusion in a Portfolio Deposit (for example, when the security is subject to a trading halt or stop order, or the subject of a tender offer), or (ii) a particular investor is restricted from investing or engaging in transactions in the Index Security (for example, when the investor is a broker-dealer restricted by regulation or internal policy from investing in securities issued by a company on whose board of directors one of its principals serves, or when the investor is a broker-dealer and the security is on its "restricted list"). In the latter situation, the Trustee will use the cash equivalent payment to purchase the appropriate number of shares of the Index Security that the investor was unable to purchase.

⁵ The Transaction Fee will be \$1,000 per day regardless of the number of Creation Units purchased on that day by the investor. An additional amount not to exceed three times the Transaction Fee will be charged to investors who purchase Creation Units via DTC rather than via the NSCC, to cover increased expense associated with settlement outside the CNS system. To the extent the Transaction Fee exceeds the Trustee's actual settlement costs, and subject to certain limitations, the excess will be subtracted from the Trustee's Fee. The Trustee's Fee also will be reduced by the amounts earned by the Trustee in respect of cash held for the benefit of the Trust and not otherwise expended on behalf of the Trust. The amount of the Transaction Fee (including any variation in the amount) will be disclosed in the prospectus for the Trust.

⁶ The procedures for processing a purchase order will depend upon whether the transaction is settled through NSCC or DTC.

Creation Units and may provide certain other administrative services, such as those related to state securities law compliance.

7. Person purchasing DJIA Trust Receipts from the Trust in Creation Unit aggregations may hold those Receipts or sell some or all of them in the secondary market. DJIA Trust Receipts will be listed on the AMEX and traded in the secondary market as individual units (*i.e.*, in less than Creation Unit size aggregations) in the same manner as other equity securities. An AMEX specialist will be assigned to make a market in DJIA Trust Receipts. The price of DJIA Trust Receipts on the AMEX will be based on a current bid/offer market and will be in the range of \$80 per Receipt (based on the value of the DJIA on November 28, 1997). Transactions involving the sale of DJIA Trust Receipts will be subject to customary brokerage commissions and charges. Applicants expect that the price at which DJIA Trust Receipts trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Unit-size aggregations at NAV, which should ensure that DJIA Trust Receipts will not trade at a material discount or premium in relation to NAV.

8. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX specialist, in providing for a fair and orderly secondary market for DJIA Trust Receipts, also may purchase Receipts for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of DJIA Trust Receipts will include both institutional and retail investors.⁷

9. Applicants will make available a standard DJIA Trust Receipt product description ("Product Description") to AMEX members and member organizations for distribution to investors purchasing DJIA Trust Receipts in accordance with AMEX Rule 1000. The purpose of the Product Description is to provide a brief and readily understandable description of the salient aspects of DJIA Trust Receipts. The Product Description will advise investors that a prospectus for DJIA Trust Receipts is available without charge upon request from the investor's account executive. Applicants expect

⁷ DJIA Trust Receipts will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding DJIA Trust Receipts. Records reflecting the beneficial owners of DJIA Trust Receipts will be maintained by DTC or its participants.

³ Changes in the composition of the DJIA are made entirely by the editors of the *Wall Street Journal*.

that customer purchases of DJIA Trust Receipts through a non-member broker-dealer in a transaction away from the AMEX floor will be rare.

10. DJIA Trust Receipts will not be individually redeemable, except upon termination of the Trust. DJIA Trust Receipts will only be redeemable in Creation Unit-size aggregations through the Trust. To redeem, an investor will have to accumulate enough DJIA Trust Receipts to constitute a Creation Unit. An investor redeeming a Creation Unit amount of DJIA Trust Receipts will receive a portfolio of securities identical in weighting and composition to the securities portion of a Portfolio Deposit as of the date the redemption request was made. An investor may receive the cash equivalent of a portfolio security (i) when the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity, (ii) upon the request of the redeeming investor, or (iii) upon notice of the termination of the Trust. A redeeming investor will also receive an amount of cash equal to the dividends accrued on the portfolio securities since the last dividend payment by the Trust, net of expenses and liabilities, and may also receive an amount of cash to equalize any differences between the Portfolio Deposit Amount and the NAV per Creation Unit. A redeeming investor will pay a Transition Fee calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.⁸ The Trustee will transfer the cash and securities to the redeeming investor on the third business day after the redemption request date.

11. Because a redeeming Creation Unit holder will ordinarily receive a Portfolio Deposit in exchange for its Unit, the Trustee will not have to maintain large cash reserves for redemptions. This will allow the Trust's assets to be committed as fully as possible to tracking the DJIA, enabling the Trust to track the index more closely than certain other investment products that must allocate a greater portion of their assets for cash redemptions.

12. The Trust will terminate on the earlier of (i) January 30, 2122, or (ii) the date 20 years after the death of the last survivor of eleven persons named in the trust agreement. The Trust also will terminate: (i) if DJIA Trust Receipts are de-listed from the AMEX; (ii) by agreement of the holders of 66 $\frac{2}{3}$ % of outstanding DJIA Trust Receipts; (iii) if the DTC is unable or unwilling to continue to perform its functions and a comparable replacement is unavailable;

and (iv) if NSCC no longer provides clearance services with respect to DJIA Trust Receipts, or if the Trustee is no longer a participant in NSCC. In addition, the Sponsor will have the discretionary right to terminate the Trust if (i) at any time after six months following and prior to three years following the initial receipt of Portfolio Deposits by the Trust the NAV of the Trust falls below \$150,000,000, and (ii) after three years the NAV is less than \$350,000,000. The Sponsor also may direct the Trustee to terminate the Trust if within 90 days from the initial receipt of Portfolio Deposits the NAV of the Trust is less than \$100,000.

13. Within a reasonable period after the Trust's termination, the Trustee will use its best efforts to sell all portfolio securities not previously distributed to investors redeeming Creation Units. DJIA Trust Receipts not redeemed prior to termination will be redeemed in cash at NAV based on the proceeds from the sale of portfolio securities.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 4(2), 14(a), 22(d), 24(d), and 26(a)(2)(C) of the Act and rule 22c-1; under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act; and under rule 17d-1 to permit certain joint transactions.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, 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.

Section 4(2) of the Act

1. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. Because DJIA Trust Receipts will not be individually redeemable, applicants request an order that would permit the Trust to register and operate as a UIT. Applicants state that investors may purchase DJIA Trust Receipts in Creation Units from the Trust and redeem Creation Units. Applicants further state that, because the market price of DJIA Trust Receipts will be disciplined by arbitrage opportunities, investors should be able to sell DJIA Trust Receipts in the secondary market at approximately their NAV.

Section 14(a) of the Act

1. Section 14(a) provides, in pertinent part, that no registered investment company may make an initial public offering of its securities unless it has a net worth of at least \$100,000, or provision is made in connection with the registration of its securities that (i) firm agreements to purchase \$100,000 worth of its securities will have been made by not more than 25 persons, and (ii) all proceeds, including sales loads, will be refunded to investors if the investment company's net worth is less than \$100,000 within 90 days after the effective date of the registration statement. Applicants state that section 14(a) was designed to address the formation of undercapitalized investment companies.

2. Rule 14a-3 under the Act exempts from section 14(a) UIT's that invest only in "eligible trust securities," which do not include equity securities, subject to certain safeguards, including the refund of any sales load collected from investors. Applicants will comply in all respects with rule 14a-3, except that the Trust will not restrict its investments to eligible trust securities and the Trustee will not refund the Transaction Fee. Applicants contend that the Trust's investment in equity securities does not negate the effectiveness of the rule's safeguards nor subject investors to any greater risk of loss due to investment in an undercapitalized investment company. With respect to the Transaction Fee, applicants assert that it is not a sales load, and therefore is not covered by the rule's refund provision. Applicants note that the Transaction Fee will be paid not by retail investors, but by institutional and other sophisticated, well-capitalized investors who can afford the approximately \$4,007,000 purchase price of a Creation Unit and who do not require the protections of section 14(a).

Section 22(d) of the Act

1. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in DJIA Trust Receipts will take place at negotiated prices, not a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of DJIA Trust

⁸ See note 5, *supra*.

Receipts in the secondary market will not comply with section 22(d) and rule 22c-1. Applicants request an exemption from these provisions.

2. Applicants assert that the concerns sought to be addressed by section 22(d) and rule 22c-1 with respect to pricing are equally satisfied by the proposed method of pricing DJIA Trust Receipts. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (i) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (iii) assure an orderly distribution investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

3. Applicants believe that none of these purposes will be thwarted by permitting DJIA Trust Receipts to trade in the secondary market at negotiated prices. Applicants state (i) that secondary market trading in DJIA Trust Receipts does not involve the Trust as a party and cannot result in dilution of an investment in DJIA Trust Receipts; and (ii) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in DJIA Trust Receipts will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of DJIA Trust Receipts and their NAV remains narrow.

Section 24(d) of the Act

1. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by a UIT. Applicants request an exemption from section 24(d) to permit dealers in DJIA Trust Receipts to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.⁹ Applicants state that the

imposition of prospectus delivery requirements on dealers in the secondary market will materially impede the success of DJIA Trust Receipts.

2. Applicants state that the secondary market for DJIA Trust Receipts is significantly different from the typical secondary market for UIT securities, which is usually maintained by the sponsor. DJIA Trust Receipts will be listed on a national securities exchange and will be traded in a manner similar to the shares of common stock issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

3. Applicants contend that DJIA Trust Receipts, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because DJIA Trust Receipts will be exchange-listed, prospective investors will have access to several types of market information about the product. Applicants state that quotations, last sale price and volume information will be continually available on a real time basis through the consolidated tape and will be available throughout the day on brokers' computer screens and other electronic services, such as Quotron. The previous day's price and volume information also will be published daily in the financial section of newspapers. The Sponsor also will publish daily, on a per DJIA Trust Receipt basis, the amount of accumulated dividends, net of accrued expenses.

4. Investors also will receive the Product Description. Applicants state

on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing a creation order with the Distributor, breaks them down to the constituents DJIA Trust Receipts, and sells DJIA Trust Receipts directly to its customers; or if it chooses to couple the creation of a supply of new DJIA Trust Receipts with an active selling effort involving solicitation of secondary market demand for DJIA Trust Receipts. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with DJIA Trust Receipts that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to make advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

that, while not intended as a substitute for a prospectus, the Product Description will contain pertinent information about DJIA Trust Receipts. Applicants also note that DJIA Trust Receipts will be readily understandable to retail investors as a product that tracks the DJIA, which is well known to most investors and widely recognized.

Section 26(a)(2)(C) of the Act

1. Section 26(a)(2)(C) requires, among other things, that a UIT's trust indenture prohibit payments to the trust's depositor (in the case of the Trust, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services. Applicants request an exemption from section 26(a)(2)(C) to permit the Trust to reimburse the Sponsor and/or the AMEX for certain licensing, registration, marketing, and organizational expenses.

2. Applicants state that, ordinarily, a sponsor of a UIT has several sources of income in connection with the creation of the trust. Applicants assert, however, that under the proposed structure of the Trust, the usual sources of income are not available because the Sponsor will not impose a sales load, maintain a secondary market, or deposit Index Securities into the Trust. Although the Sponsor's parent company, the AMEX, will earn some income on the trading fees imposed on transactions occurring on the AMEX, applicants expect that the fees will generate substantially less revenue than what would have been generated by a normal sales charge on secondary market trades of DJIA Trust Receipts. Applicants contend that the abuse sought to be remedied by section 26(a)(2)(C)—"double dipping" by UIT sponsors collecting money from their captive trusts as well as the profits already generated by sales charges and other sources—will not be present if the requested exemption is granted.

3. Applicants contend that permitting the Trust to reimburse the Sponsor for the Trust's expenses (discussed above) would be no more disadvantageous to the holders of DJIA Trust Receipts than allowing the expenses to be imposed indirectly as offsets to sales loads and other charges, as is done by typical UITs. Applicants also state that the Trust will pay the Sponsor only its actual out-of-pocket expenses and no component of profit will be included. Finally, applicants state that the payment is capped at 20 basis points of the Trust's NAV on an annualized basis, with any expenses in excess of that amount absorbed by the Sponsor.

⁹ Applicants state that persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending

Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units will be "in-kind" rather than cash transactions, section 17(a) may prohibit affiliated persons of the Trust from purchasing or redeeming Creation Units. Because the definition of "affiliated person" of another person in section 2(a)(3) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the Trust so long as fewer than twenty Creation Units are extant. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit affiliated persons of the Trust to purchase and redeem Creation Units.

2. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting affiliated persons of the Trust from purchasing or redeeming Creation Units. The composition of a Portfolio Deposit made by a purchaser or given to a redeeming unitholder will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Trust's portfolio securities. Therefore, applicants state that "in kind" purchases and redemptions will afford no opportunity for an affiliated person of the Trust to effect a transaction detrimental to the other holders of DJIA Trust Receipts. Applicants also believe that "in kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Trust.

Rule 17d-1

1. Applicants request an order under rule 17d-1 that would permit the Trust to reimburse the Sponsor and/or the AMEX for the payment by either party to Dow Jones of the annual fee required under a license agreement. The license agreement allows applicants to use the DJIA as a basis for DJIA Trust Receipts

and to use certain of Dow Jones' trademark rights. Applicants believe that relief is necessary because the Trust's undertaking to reimburse the Sponsor and/or the AMEX (each an affiliated person of the Trust) might be deemed a joint enterprise or joint arrangement in which the Trust is a participant, in contravention of section 17(d) of the Act and rule 17d-1.

2. Applicants assert that the terms and provisions of the license agreement were negotiated at arm's length and that the annual license fee is for fair value, bargained for in good faith, and, to the best of their knowledge, is an amount comparable to that charged for similar arrangements. Applicants submit that the proposed transaction will result in an arrangement in which the participants deal with each other in a manner similar to, and no less advantageous than, others who might be similarly situated.

Applicants' Conditions

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

1. Applicants will not register a new series of the Trust, whether identical or similar to the DJIA Trust Receipts Series, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such new series, either exemptive relief from the Commission or a no-action position from the Division of Investment Management of the Commission.

2. The Trust's prospectus and the Product Description will clearly disclose that, for purposes of the Act, DJIA Trust Receipts are issued by the Trust and that the acquisition of DJIA Trust Receipts by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 97-32487 Filed 12-11-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22928; 811-5280]

Partner Wealth Fund I, L.P.; Notice of Application

December 5, 1997.

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

ACTION: Notice of application for order under section 8(f) of the Investment Company Act of 1940 (the "Act") declaring that applicant has ceased to be an investment company.

SUMMARY OF APPLICATION: Applicant, Partner Wealth Fund I, L.P., is an employees' securities company under section 2(a)(13) of the Act. Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on November 19, 1997. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1997, and should be accompanied by proof of service on the applicant, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 Clay Street, Suite 2300, Houston, TX 77002.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942-0517 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: This is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

Applicant's Representations

1. Applicant is a Delaware limited partnership and an employees' securities company under section 2(a)(13) of the Act. On July 21, 1987, applicant received an order from the SEC exempting applicant from various provisions of the Act.¹ On August 13, 1987, applicant filed a notification of registration on Form N-8A.

2. Under applicant's limited partners have received distributions at least

¹ Investment Company Act Release Nos. 15824 (notice) (June 24, 1987) and (July 21, 1987) (order).