

*Additional Information or Comments:* Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (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 and the OMB reviewer, Laurie Schack 202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**  
Clearance Officer.

[FR Doc. 99-12131 Filed 5-12-99; 8:45 am]

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## RAILROAD RETIREMENT BOARD

### Sunshine Act Meeting; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 20, 1999, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

- (1) Continued Payment of Vested Dual Benefit Project
- (2) Occupational Disability (FCE Protocols)
- (3) SES Position for Planning, Procedures & Systems
- (4) Year 2000 Issues

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312-751-4920.

Dated: May 10, 1999.

**Beatrice Ezerski,**

Secretary to the Board.

[FR Doc. 99-12200 Filed 5-12-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41362; File No. 10-100]

### Exempted Exchanges; AZX, Inc.; Order Amending Exemption Order Under Section 5 of the Securities Exchange Act of 1934; Final Order

May 3, 1999.

#### I. Introduction

AZX, Inc. has requested that the Securities and Exchange Commission ("Commission") amend the Exemption Order pursuant to which AZX, Inc.

operates the Arizona Stock Exchange ("AZX") without registration as a national securities exchange.<sup>1</sup> The amended Exemption Order would permit AZX to trade exchange-listed securities during regular trading hours, conduct two additional regular hours auctions, and consolidate its evening auctions. The proposal was published for comment in the **Federal Register** on February 1, 1999.<sup>2</sup> No comment letters were received. After evaluating the proposal, the Commission concludes that AZX will continue to meet the statutory standard for an exchange operating pursuant to the limited volume exemption from registration under Section 5 of the Securities Exchange Act of 1934 ("Act").<sup>3</sup> Accordingly, the Commission hereby amends AZX's Exemption Order as requested by AZX, Inc., subject to the terms and conditions described below.

#### II. AZX

AZX, Inc. operates AZX, a computerized, single-price auction system that facilitates trading of registered equity securities by broker-dealers and institutions. AZX operates three off-hours auctions in Nasdaq National Market ("NNM") and exchange-listed securities, at 9:15 a.m., 4:20 p.m., and 5:00 p.m. (ET), each trading day. AZX also operates one auction during regular trading hours,<sup>4</sup> at 10:30 a.m. (ET). As described in its Exemption Order, AZX trades only NNM securities during the 10:30 a.m. auction.

#### III. The Proposal

On July 30, 1998, AZX, Inc. filed with the Commission pursuant to Rule 6a-1 under the Act,<sup>5</sup> an amendment to its application for exemption from registration as a national securities exchange. In its amendment, AZX proposes to operate two additional auctions during regular trading hours, at 12:30 p.m. and 2:30 p.m. (ET) each

trading day. AZX also proposes to trade exchange-listed and NNM securities during all three regular hours auctions. In addition, AZX proposes to consolidate its two evening after-hours actions into one after-hours auction ending at 4:30 p.m. (ET). Under the proposal, there would be five AZX auctions—two off-hours and three regulator hours. All five auctions would be permitted to trade both exchange-listed and NNM securities, and will be subject to real-time transaction reporting under National Association of Securities Dealers, Inc. ("NASD") rules.

#### IV. Discussion

##### A. Volume Level

The Commission believes that the changes proposed by AZX should not change AZX's status as an exempted exchange. The limited volume exemption continues to be premised on AZX's average daily volume (including both regular and after-hours auctions) remaining below the average daily volume of the lowest volume national securities exchange.<sup>6</sup> AZX's current average daily volume is well below that of the lowest volume national securities exchange.<sup>7</sup> Moreover, given the wide range of alternatives available to investors during regular trading hours, AZX's proposal to trade listed securities during its regular hours auctions (including two additional auctions) does not seem likely to result in AZX's volume exceeding the volume of any national securities exchange. Should AZX's volume exceed the limited volume threshold, however, the Commission may rescind the exemption.<sup>8</sup>

<sup>6</sup> The Exemption Order states that the Commission would be concerned if the volume of an exempted exchange "exceeded that of any of the fully regulated national securities exchanges." Securities Exchange Act Release No. 28899, *supra* note 1 at 8380.

<sup>7</sup> The Philadelphia Stock Exchange ("Phlx") is currently the lowest volume national securities exchange. For calendar year 1998, the average daily volume of the Phlx was approximately 6,262,127 shares. For calendar year 1998, the average daily volume of AZX was approximately 95,168 shares—less than 2% of the volume of the Phlx.

<sup>8</sup> The Exemption Order states that "[s]hould the Commission learn that any of the conditions set forth in this Order or otherwise imposed upon the granting of this exemption have been breached \* \* \* the Commission will commence a review to determine whether to rescind the exemption." Securities Exchange Act Release No. 28899, *supra* note 1 at 8383. In the event the Commission rescinds the exemption because AZX's volume exceeds the limited volume threshold, AZX would have the option to continue operating by registering as a national securities exchange, or registering as a broker-dealer and complying with Regulation ATS. See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

<sup>1</sup> Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377 (February 28, 1991), amended by Securities Exchange Act Release No. 37272 (June 3, 1996), 61 FR 29145 (June 7, 1996) (collectively "Exemption Order"). AZX also operates without registering as a broker-dealer, clearing agency, transfer agent, or exclusive securities information processor pursuant to a staff no-action letter. Letter from Richard G. Ketchum, Director, Commission, to Daniel T. Brooks, Esq., Cadwalader, Wickersham & Taft, regarding Wunsch Auction Systems, Inc., dated February 28, 1991.

<sup>2</sup> Securities Exchange Act Release No. 40961 (January 22, 1999), 64 FR 4908.

<sup>3</sup> 15 U.S.C. 78e.

<sup>4</sup> "Regular trading hours" refers to the time period in which the New York Stock Exchange, Inc. permits trading, which is 9:30 a.m. to 4:00 p.m. (ET) each trading day.

<sup>5</sup> 17 CFR 240.6a-1.

**B. Other Conditions**

All of the original and conditions of the Exemption Order remain in effect. In addition, this Order imposes an additional conditions—that AZX conduct surveillance of trading of listed securities during regular trading hours to detect, among other things, potential insider trading and market manipulation. As a condition of the original Exemption Order in 1991, AZX undertook to conduct surveillance of its after-hours trading. When it began trading NNM securities during regular trading hours in 1996, AZX implemented additional surveillance procedures tailored to regular hours trading in NNM stocks. AZX has now agreed to adapt those procedures to trading in listed securities. Specifically, AZX will compare AZX auction prices and bids and offers entered into AZX with trading activity on the registered exchanges, and will monitor the effects of an order cancellation or order revision on the price of the stock on the primary exchange.

**V. Conclusion**

The Commission has determined that AZX will continue to qualify for a limited volume exemption from exchange registration under the Act even if it implements the changes described in this order. Subject to the conditions described above, the Commission finds that, by reason of the limited volume of transactions effected on AZX, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require AZX's registration as a national securities exchange. The Commission reserves the right to apply further conditions or rescind the exemption if circumstances change or if AZX does not operate as represented.

*It is therefore ordered* that AZX's Exemption Order be amended to grant AZX's amended application for exemption from registration as a national securities exchange, subject to the terms and conditions described above.

By the Commission.

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

[FR Doc. 99-12061 Filed 5-12-99; 8:45 am]

BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 23828; 812-11548]

**Bankers Trust Company, et al.; Notice of Application**

May 7, 1999.

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

**ACTION:** Extension of temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

**SUMMARY OF THE APPLICATION:**

Applicants have received an extension of a temporary order exempting them and other entities of which Bankers Trust Company ("BT") is or becomes an affiliated person from section 9(a) of the Act, with respect to a March 11, 1999 cooperation and plea agreement between BT and the U.S. Attorney for the Southern District of New York, until the Commission takes final action on an application for a permanent order or, if earlier, November 8, 1999. Applicants also have requested a permanent order.

**APPLICANTS:** BT, Investment Company Capital Corporation ("ICCC"), BT Funds Management (International) Limited ("FMIL"), and Alex. Brown Investment Management ("ABIM").

**FLING DATES:** The application was filed on March 25, 1999 and amended on April 28, 1999.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing or further extends the temporary exemption. 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 June 1, 1999 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 by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.Y., Washington, D.C. 20549-0609. Applicants: BT, One Bankers Trust Plaza, 31st Floor, New York, NY 10006; ICCC, One South Street, Baltimore, MD 21202-3220; FMIL, The Chifley Tower, 2 Chifley Square, Sydney, NSW 2000, Australia; and ABIM, 217 E. Redwood Street, Baltimore, MD 21202.

**FOR FURTHER INFORMATION, CONTACT:**

Rachel H. Graham, Senior Counsel at (202) 942-0583, or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is an extension of a temporary order and 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. 20549-0102 (telephone (202) 942-8090).

**Applicants' Representations**

1. BT, a New York banking corporation, is the principal bank subsidiary of Bankers Trust Corporation ("BT Corp"), a New York corporation that, together with its affiliates and subsidiaries, performs a wide range of banking and financial services worldwide. BT, which is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act"), serves as investment adviser or subadviser to numerous investment companies registered under the Act ("funds").

2. ICCC, a Maryland corporation, and FMIL, an Australian corporation, are indirect wholly-owned subsidiaries of BT Corp. BT Corp indirectly owns approximately 50% of ABIM, a Maryland limited partnership. Accordingly, BT may be deemed to be under common control with ICCC, FMIL, and ABIM (each an "Affiliated Adviser" and, collectively, the "Affiliated Advisers"). Each Affiliated Adviser is registered under the Advisers Act and serves as investment adviser or subadviser to various funds.

3. BT acts as administrator, custodian, transfer agent, and shareholder servicing agent for certain funds advised by it or the Affiliated Advisers. BT also acts as custodian for certain other funds. ICCC acts as transfer agent for funds advised by it or other Affiliated Advisers. BT and ICCC are registered as transfer agents under the Securities Exchange Act of 1934.

4. On March 11, 1999, the U.S. Attorney for the Southern District of New York filed a three-count felony information ("Information") in the United States District Court for the Southern District of New York ("Court") alleging violations of 18 U.S.C. section 1005. The Information charges BT with making false entries on its books and records as a result of the conduct of certain employees in BT's processing services businesses in 1994-1996. The conduct involved the transfer to reserve accounts and to income of aged credit