CTFs and the Mutual Funds may not be solely by reason of having a common investment adviser, common directors, and/or common officers. In addition, the Conversions will be effected as in-kind transfers, rather than in cash.

3. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of assets of registered investment companies from the provisions of section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the board of directors of each investment company makes certain determinations. Applicants state that rule 17a–8 is not available for the Conversions because the CTFs are not registered investment companies and because the CTFs and the Mutual Funds have affiliations other than those covered by the rule.

4. Section 17(b) of the Act provides that the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

5. Section 6(c) provides that the Commission may exempt any person or transaction from any provision of the Act or any rule under the Act 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.

6. Applicants seek an order under sections 6(c) and 17(b) of the Act to permit the Conversions and Future Transactions. Applicants submit that the proposed transactions satisfy the standards for relief under sections 6(c) and 17(b). Applicants assert that the terms of the Conversions are reasonable and fair and do not involve overreaching on the part of any person; the investment objectives and policies of the CTFs are compatible with and similar to the applicable Mutual Fund's investment objectives and policies; and the Conversions and the requested exemption are in the public interest, consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

7. Applicants state that the Conversions will meet all of the conditions of rules 17a–7 and 17a–8, except as noted above. Applicants state that the Conversions are in accordance with procedures previously adopted by the Mutual Funds' board of trustees (the ''Board'') pursuant to rule 17a–7(e), and the provisions of rule 17a–7(b), (c), (d), and (f) will be satisfied. The Conversions will take place as in-kind transfers from the CTFs to the Mutual Funds, rather than cash transactions as required by rule 17a–7(a). Applicants assert that if the Conversions were effected in cash, the CTFs and the Mutual Funds would have to bear unnecessary expense and inconvenience in transferring assets to the Mutual Funds. In addition, applicants state that the Board, including a majority of the disinterested members, has determined that the participation of each Mutual Fund in the Conversions is in the best interests of that Mutual Fund and that the interests of existing shareholders of the Mutual Fund will not be diluted as a result of a Conversion. Such findings and the basis on which they were made will be fully recorded in the minute books of the Mutual Funds.

Applicants' Conditions

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

1. The Conversions will comply with the terms of Rule 17a–7(b) through (f).

2. The Conversions will not occur unless and until the Board (including a majority of the disinterested members) finds that participation by the Mutual Funds in the Conversions is in the best interests of each Mutual Fund and that the interests of the existing shareholders of the Mutual Funds will not be diluted as a result of the Conversions. These findings, and the basis upon which they are made, will be recorded fully in the minute books of the Trust.

3. The Conversions will not occur unless and until Wachovia, as trustee and fiduciary of each CTF and the Participants therein, has determined in accordance with its fiduciary duties that the Conversions are in the best interests of Participants in the CTFs.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 99–17970 Filed 7–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23898; 812–11482]

Wayne Hummer Investment Trust, et al.; Notice of Application

July 8, 1999.

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

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to use uninvested cash to purchase shares of affiliated money market funds.

APPLICANTS: Wayne Hummer Investment Trust (''Trust''), all existing and future series thereof, and any other registered open-end management investment company and its series that are currently or in the future advised by Wayne Hummer Management Company (the ''Adviser'') or any entity controlling, controlled by, or under common control with the Adviser (collectively, the ''Funds''), the Adviser, and Wayne Hummer Investments L.L.C. (''WHILLC'').

FILING DATES: The application was filed on January 27, 1999, and amended on May 18, 1999. Applicants have agreed to file another amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief 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 July 29, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–

0609. Applicants, 300 South Wacker Drive, Suite 1500, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Susan K. Pascocello, Senior Counsel, at (202) 942–0674, or Michael W. Mundt, 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 SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is organized as a Massachusetts business trust and is an open-end management investment company registered under the Act. The Wayne Hummer Investment Trust currently consists of two series, a growth fund and an income fund (together with any future Funds that are not money market funds, the ''Non-Money Market Funds'') and as of July 31, 1999 will add two more series, one of which will be a money market fund (together with any future Funds that are money market funds, the ''Money Market Funds'').[1] The Adviser, an Illinois corporation, serves as investment adviser to each Fund and is registered as an investment adviser under the Investment Advisers Act of 1940. WHILLC, a Delaware limited liability company, acts as the distributor for each of the existing Funds.

2. Each Non-Money Market Fund has, or may be expected to have, uninvested cash (''Uninvested Cash'') held by its custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from the liquidation of investment securities, and new investor capital.

3. Applicants request an order to permit a Non-Money Market Fund to use its Uninvested Cash to purchase shares of a Money Market Fund, and the Money Market Fund to sell shares to and redeem from the Non-Money Market Fund, provided that the Non-Money Market Fund's aggregate investment in Money Market Funds does not exceed 25% of the Non-Money Market Fund's total assets at any time. Applicants believe that the ability to invest Uninvested Cash in Money Market Funds will benefit the Non-Money Market Funds by providing high rates of return, ready liquidity, and increased diversification.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities 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.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any persons 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 request relief under section 12(d)(1)(J) to permit the Non-Money Market Funds to use Uninvested Cash to purchase shares of the Money Market Funds and the Money Market Funds to sell the shares in excess of the limitations in sections 12(d)(1) (A) and (B), provided that no Non-Money Market Fund will invest more than an aggregate of 25% of its total assets in all Money Market Funds at any time.

3. Applicants submit that the proposed transactions do not implicate the abuses that sections 12(d)(1) (A) and (B) were intended to prevent, which include the exercise of undue influence by an acquiring fund over an acquired fund and layering of fees. Applicants state that each of the Money Market Funds will be managed specifically to maintain a highly liquid portfolio and will not be susceptible to undue control due to the threat of large-scale redemptions. Applicants also submit that there will be no layering of fees because no sales load, redemption fee, asset-based distribution fee or service fee will be charged in connection with the purchase and sale of shares of the Money Market Funds. Applicants state that the Adviser currently intends to credit to the Non-Money Market Fund, or waive, the investment advisory fees that it earns as a result of the investment in the Money Market Funds.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that because the Funds are advised by the Adviser and share a common board of trustees, the Funds may be deemed to be under common control and affiliated persons of one another. As a result, section 17(a) would prohibit the sale of shares of a Money Market Fund to a Non-Money Market Fund and the redemption of the shares by the Non-Money Market Fund.

5. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) if the terms of the proposed 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, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

6. Section 6(c) of the Act permits the SEC to exempt any person, security, or transaction from any provision of the Act if, and to the extent that, the 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.

7. Applicants submit that the request for relief satisfies the standards of sections 17(b) and 6(c). Applicants state that the proposed transactions are reasonable and fair and would not involve overreaching because shares of the Money Market Fund will be purchased and redeemed by the Non-Money Market Funds at net asset value. Applicants also note that Non-Money Market Funds will retain their ability to invest their Uninvested Cash directly in money market instruments in accordance with their investment objectives and policies if a higher return can be obtained or for any other reason. Applicants assert that each Money Market Fund may discontinue selling its shares to any of the Non-Money Market Funds if the board of trustees of the Money Market Fund determines that the sale would adversely affect the Money Market Fund's portfolio management and operations.

[1] All existing investment companies that currently intend to rely on the order have been named as applicants, and any other existing or future registered management investment companies that subsequently rely on the order will comply with the terms and conditions in the application.

8. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in any joint arrangement with the investment company. Applicants assert that the Non-Money Market Funds, by purchasing shares of the Money Market Funds, the Money Market Funds, by selling shares to Non-Money Market Funds, and the Adviser, by managing the proposed transactions, could be deemed to be participants in a joint arrangement.

9. Rule 17d–1 under the Act permits the SEC to approve a joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from, or less advantageous than, that of other participants. Applicants assert that the Funds will participate in the proposed transactions on a basis not different from or less advantageous than that of other participants and that the transactions will be consistent with the purposes of the Act.

Applicants' Conditions

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

1. Shares of the Money Market Funds sold to and redeemed from the Non-Money Market Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Rules of Conduct).

2. If the Adviser collects a fee from a Money Market Fund for acting as its investment adviser with respect to assets invested by a Non-Money Market Fund, before the next meeting of the board of trustees of a Non-Money Market Fund that invests in the Money Market Funds (''Board'') is held for the purpose of voting on an advisory contract for the Non-Money Market Fund under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser for, or portion of the advisory fee under the existing advisory contract attributable to, managing the assets of the Non-Money Market Fund that can be expected to be invested in such Money Market Funds. Before approving any advisory contract under section 15, the Board, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser should be reduced to account for the fee indirectly paid by the Non-Money Market Fund because of the advisory fee paid by the Money Market Fund to the Adviser. The minute books of the Non-Money Market Fund will record fully the Board's considerations in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Non-Money Market Funds will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Non-Money Market Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Non-Money Market Fund's total assets. For purposes of this limitation, each Non-Money Market Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Non-Money Market Fund's respective investment restrictions and policies set forth in its prospectus and statement of additional information.

5. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Each Non-Money Market Fund, Money Market Fund, and any future Fund that may rely on the requested order will be advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17932 Filed 7–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41599; File No. SR–CBOE–99–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Exchange's Rapid Opening System

July 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 21, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE proposes to amend Rule 6.2A, *Rapid Opening System*, which governs the operation of the Exchange's Rapid Opening System, to allow for two Floor Officials to adjust effected trades in cases where an underlying stock has been opened at an erroneous price and later corrected on the underlying market. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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 CBOE 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 CBOE 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

The Exchange proposes to add sub-paragraph (a)(iii) to CBOE Rule 6.2A to provide that two Floor Officials may adjust trades executed through the Exchange's Rapid Opening System (''ROS'') when the primary market for the underlying has opened a security at an erroneous price and then later corrects that opening price.

In the period of time since CBOE Rule 6.2A was approved by the Commission on a pilot basis,[3] the Exchange has had a very positive experience with ROS. ROS has enabled the Exchange to open classes of options within seconds of the opening of the underlying security thus,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41033 (February 9, 1999) 64 FR 8156 (February 18, 1999).