

parties and PSI was also authorized to issue and sell commercial paper.<sup>3</sup>

Under the 1997 Order, the maximum allowable outstanding principal amount of short-term borrowing from all available sources was \$50 million for ULH&P; \$3 million for Lawrenceburg; \$100,000 for Miami; and \$400 million for PSI. Applicants state that these debt limitations established under the 1997 Order are no longer appropriate in light of current capital requirements. Therefore, Applicants propose to supersede the 1997 Order by replacing the short-term debt finance program and extending the authorization period through June 30, 2006.

Specifically, the Nonexempt Subsidiaries propose to make loans to and incur borrowings from each other the Money Pool; Services, CG&E, KO and Tri-State and KO proposes to make loans to the Nonexempt Subsidiaries; the Nonexempt Subsidiaries propose to incur short-term borrowings from banks or other financial institutions; and PSI proposes to issue and sell commercial paper. As proposed, the maximum allowable outstanding principal amount of short-term borrowings from all available sources will not exceed \$65 million for ULH&P; \$5.5 million for Lawrenceburg; \$100,000 for Miami; and \$600 million for PSI.

The Nonexempt Subsidiaries propose to borrow short-term funds from banks and other financial institutions through formal or informal credit facilities. Bank borrowings would be evidenced by promissory notes, each of which would be issued on or before June 30, 2006 and would mature no later than one year from the date of issuance, except in the case of borrowings by ULH&P, which would mature no later than two years from the date of issuance. The notes will bear interest at a rate no higher than the greater of: (1) 400 basis points over the comparable London interbank offered rate or (2) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The Nonexempt Subsidiaries may be required to pay fees to the lender not to exceed 100 basis points per annum on the total commitment; and, except for borrowings on uncommitted credit lines, may be

prepayable in whole or in part, with or without a premium.

PSI proposes to issue and sell commercial paper at market rates (either on an interest bearing or discount basis) with varying maturities not to exceed 270 days. The commercial paper will be in the form of book-entry unsecured promissory notes with varying denominations of not less than \$25,000 each. In commercial paper sales effected on a discount basis, the purchasing dealer may re-offer the commercial paper at a rate less than the rate to PSI. The discount rate to dealers will not exceed the maximum discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and the same maturity. The purchasing dealer will re-offer the commercial paper in such a manner as not to constitute a public offering within the meaning of the Securities Act of 1933.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25005; 811-5982]

### Hawthorne Investment Trust; Notice of Application

June 19, 2001.

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

**ACTION:** Notice of Application for Deregistration under section 8(f) of the Investment Company Act of 1940 (the "Act").

**SUMMARY OF APPLICATION:** Applicant requests an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on December 11, 2000.

**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 July 13, 2001, 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, NW, Washington, DC 20549. Applicant, c/o A. John Pappalardo, Esq., and K. Robert Bertram, Esq., Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or Mary Kay Frech, Branch Chief, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (telephone (202) 942-8090).

### Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized as a trust under the laws of the State of Delaware. On December 19, 1989, applicant filed a notification of registration under section 8(a) of the Act on Form N-8A. SEC records indicate that on December 19, 1989, applicant filed a registration statement on Form N-1A that became effective on June 4, 1990.

2. As of the date of the application, beneficial interests in applicant were held by one natural person, Mr. Charles G. Dyer.

3. As of December 7, 2000, the assets of applicant totaled approximately \$3,000. Applicant's liabilities totaled approximately \$36,000, consisting primarily of investment advisory fees, custodian and administrator charges, and legal and accounting expenses.

4. Applicant currently is not a party to any litigation or administrative proceeding, except the administrative proceeding instituted by the SEC's Division of Enforcement and captioned: In the Matter of Hawthorne Investment Trust, Hawthorne Associates, Inc., Mustang Capital, LLC and Charles G. Dyer. The application is submitted in connection with that proceeding.

### Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the SEC, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the SEC shall so declare by order and upon the taking

<sup>3</sup> It is stated that the short-term borrowing authority requested in the application-declaration for ULH&P, Lawrenceburg, Miami and PSI ("Nonexempt Subsidiaries") is not subject to state jurisdiction. Therefore, the filing exemption provided by rule 52(a) under the Act is not available to these companies. However, the Public Utilities Commission of Ohio does have authority over short-term borrowings by CG&E, which, therefore, may issue short-term debt under the exemption provided by rule 52(a).

effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(c)(1) of the Act provides that an issuer is not an investment company within the meaning of the Act if its outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and it is not making and does not propose to make a public offering of its securities.

3. Applicant states that it is not an investment company within the meaning of section 3(c)(1) of the Act because its outstanding securities are owned by one natural person and it is not making and does not presently propose to make a public offering of its securities.

4. Applicant will conduct its business so as to remain exempt from registration as an investment company pursuant to section 3(c)(1) or another provision of the Act. Applicant will adopt procedures reasonably designed to ensure that it remains exempt from registration under the Act. Applicant estimates that it will wind up operations and liquidate its remaining assets within 30 days of the date of the requested order. Accordingly, applicant requests that the SEC issue an order declaring that it has ceased to be an investment company.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-15849 Filed 6-22-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44449; File No. SR-Amex-2001-29]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Implementation of Automatic Execution for Exchange Traded Funds on a Six-Month Pilot Basis

June 19, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 8, 2001, the American Stock Exchange LLC ("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 Exchange. On May 24, 2001, June 12, 2001, and June 18, 2001, respectively, the Amex filed Amendment Nos. 1, 2, and 3 to the proposed rule change with the Commission.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

The Amex proposes to adopt Exchange Rule 128A to implement an automatic execution feature for eligible orders in Exchange Traded Funds ("ETFs") on a six-month pilot basis. The text of the proposed rule change follows. Proposed new language is in *italics*.

\* \* \* \* \*

#### Automatic Execution For Exchange Traded Funds

*Rule 128A.* The Exchange shall determine the size and other parameters of orders eligible for execution by its Automatic Execution System (Auto-Ex). An Auto-Ex eligible order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 30 seconds between entry of each such order in a security. Members and member organizations are responsible for establishing procedures to prevent orders in a security for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 30 seconds.

#### Commentary

.01 *Auto-Ex eligible orders for Exchange Traded Funds ("ETFs") must be round lot, market or marketable limit orders for 2,000 shares or less received by the Exchange electronically. Orders for an account in which a market maker in ETFs registered as such on another market has an interest are ineligible for Auto-Ex for ETFs. Notice concerning Auto-Ex eligibility criteria will be provided to members periodically via Exchange circulars and will be posted on the Exchange's web site.*

.02 *Upon the request of a specialist, the Auto-Ex Enhancements Committee ("Committee") will review and approve, disapprove or conditionally approve requests to increase the size of Auto-Ex*

*eligible orders above 2,000 shares. The Committee will balance the interests of investors, the specialist, Registered Options Traders in the crowd, and the Exchange in determining whether to grant a request to increase the size of Auto-Ex eligible orders above 2,000 shares. The Committee also will consider a request from a specialist to reduce the size of Auto-Ex eligible orders balancing the same interests that the Committee would consider in determining whether to increase the size of Auto-Ex eligible orders.*

.03 *Upon the request of a specialist, a Floor Governor may reduce the size of Auto-Ex eligible orders below 2,000 shares or increase the size of Auto-Ex eligible orders up to 5,000 shares if such action is appropriate in view of system problems or unusual market conditions. Any such change in the size of Auto-Ex eligible orders will be temporary and will only last until the end of the unusual market condition or the correction of the system problem.*

*Auto-Ex eligible orders will be routed to the specialist and will not be automatically executed in situations where the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and if the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes.*

*Members and member organizations will be notified when the size of Auto-Ex eligible orders is adjusted due to system problems or unusual market conditions. Members and member organizations also will be notified when the Exchange has determined that quotes are not reliable and the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes prior to disengaging Auto-Ex.*

.04 *When the Amex establishes the NBBO (National Best Bid or Offer), Auto-Ex will be programmed to execute eligible incoming ETF orders at the Amex Published Quote ("APQ") plus a programmable number of trading increments with respect to the Amex bid (with respect to incoming sell orders), and less a programmable number of trading increments with respect to the Amex offer (with respect to incoming buy orders). The amount of price improvement relative to the APQ will be determined by the Committee.*

*When the Amex does not establish the NBBO, Auto-Ex will be programmed to execute eligible incoming ETF orders at or better than the NBBO up to a specified number of trading increments relative to the APQ. Auto-Ex will*

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The substance of Amendment Nos. 1, 2, and 3 is incorporated into this notice.