

### Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 26, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 10th day of July 2001.

For the Nuclear Regulatory Commission.

**David E. LaBarge,**

*Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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### SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-25060; 812-12126]

#### Northern Institutional Funds, et al.; Notice of Application

July 11, 2001.

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

**ACTION:** Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") exempting applicants from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act, under section 6(c) of the Act for an exemption from section 17(e) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act permitting certain joint transactions.

**SUMMARY:** *Summary of Application:* The order would permit certain registered open-end investment companies to use their cash reserves that have not been

invested in portfolio securities ("Uninvested Cash") to purchase shares of certain money market funds ("Money Market Portfolios"). The order also would permit certain registered open-end investment companies to use cash collateral from securities lending transactions ("Cash Collateral") to purchase shares of the Money Market Portfolios or private investment funds ("Private Funds" and, together with the Money Market Portfolios, the "Investment Funds") and to pay fees based on a share of the revenue generated from securities lending transactions to an affiliated lending agent. The order also would permit the lending agent and certain of its affiliates to engage in principal transactions with, and receive brokerage commissions from, certain open-end investment companies that are affiliated with the lending agent and its affiliates solely as a result of investing Cash Collateral in the Investment Funds.

**Applicants:** Northern institutional Funds ("NIF"), Northern Funds ("NF"), The Northern Trust Company ("Northern"), Northern Trust Investments, Inc. ("NTI"), Northern Trust Global Investments (Europe) Limited ("NTGIE"), and AB Funds Trust ("AB").

**Filing Dates:** The application was filed on May 31, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**Hearing or Notification of Hearing:** An order granting the application will be issued unless the Commission orders a hearing. 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 July 31, 2001, 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 Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants (other than AB), 50 South LaSalle Street, Chicago, IL 60675. AB, 2401 Cedar Springs Road, Dallas, TX 75201.

**FOR FURTHER INFORMATION CONTACT:** John L. Sullivan, Senior Counsel, at (202) 942-0681, or Michael W. Mundt, 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 at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

#### Applicants' Representations

1. NIF, NF and AB, all of which are Delaware business trusts, are open-end management investment companies registered under the Act that have 22, 35 and 13 portfolio series, respectively. Northern, a principal subsidiary of Northern Trust Corporation, is an Illinois state-chartered commercial bank and a member of the Federal Reserve System. NTI, an indirect wholly owned subsidiary of Northern Trust Corporation, is an Illinois state-chartered trust company. NTGIE, an indirect wholly owned subsidiary of Northern Trust Corporation, is organized under the laws of the United Kingdom. NTI and NTGIE are registered investment advisers under the Investment Advisers Act of 1940 and serve as the investment advisers to both NIF and NF. It is contemplated that Northern, NTI, NTGIE or an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Northern, NTI, or NTGIE (collectively, "Northern Entities") will serve as sub-adviser to certain portfolio series of AB when they commence operations. NIF, NF, AB and any other registered investment company or portfolio series that currently, or in the future, is advised by a Northern Entity are collectively referred to as the "Affiliated Funds."<sup>1</sup> The Money Market Portfolios will comply with rule 2a-7 under the Act and will either be a portfolio series of NIF or an Affiliated Fund that is organized specifically for the investment of Uninvested Cash and/or Cash Collateral.

2. The Private Funds are common trust funds that will operate as private investment companies in reliance on section 3(c)(1) or 3(c)(7) of the Act. Units of the Private Funds ("Units") may be offered to the Lending Funds (as defined below) in reliance on Regulation D under the Securities Act of

<sup>1</sup> A registered investment company or series that is subadvised, but not advised, by a Northern Entity may be considered an Affiliated Fund for purposes of the requested relief except that (a) the relief requested from section 12(d)(1) to permit the investment of Uninvested Cash will not apply to such fund, and (b) such fund will not be a Money Market Portfolio that receives Uninvested Cash and/or Cash Collateral.

1933. Any Private Fund that uses the amortized cost method of valuation as defined in rule 2a-7 under the Act will comply with rule 2a-7. A Northern Entity will act as the trustee ("Trustee") of each Private Fund.

3. Applicants request relief for any existing or future Northern Entity, Affiliated Fund, Private Fund, or other registered investment company or series that is not an Affiliated Fund ("Other Fund").<sup>2</sup>

4. Each of the Affiliated Funds has, or may be expected to have, Uninvested Cash that results from a variety of sources, including new monies received from investors, dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, and liquidation of investment securities to meet anticipated redemptions and dividend payments. Applicants propose that the Affiliated Funds use Uninvested Cash to purchase shares ("Shares") of the Money Market Portfolios. An Affiliated Fund's aggregate investment of Uninvested Cash in Money Market Portfolios will not exceed 25% of the Affiliated Fund's total assets and will be in accordance with the Affiliated Fund's investment restrictions and policies described in its prospectus and statement of additional information.

5. A Northern Entity (the "Lending Agent") will administer a securities lending program (the "Lending Program") whose participants will include Affiliated Funds and Other Funds (together, the "Lending Funds"). Each Lending Fund will be authorized to seek additional income by lending portfolio securities. The Lending Agent will enter into agreements ("Agreements") with certain entities ("Borrowers") designated by a Lending Fund. Under the Agreements, the Lending Agent will lend securities to Borrowers in exchange for Cash Collateral or other types of collateral, such as U.S. Government securities or irrevocable letters of credit, as approved by the board of directors or trustees of a Lending Fund ("Board"). Cash Collateral will be delivered in connection with most loans. The Lending Agent will invest Cash Collateral in accordance with specific guidelines provided by the Lending Fund. These guidelines will identify the

particular types of instruments, including Shares, Units, repurchase agreements and other money market instruments, in which Cash Collateral may be invested, as well as the amounts that may be invested.

6. The personnel of the Northern Entity providing day-to-day lending agency services to the Lending Funds will neither provide investment advisory or sub-advisory services to the Lending Funds, nor participate in any way in the selection of portfolio securities for, or other aspects of management of the Lending Funds.

7. With respect to loans involving Cash Collateral, the Borrower will be entitled to receive an agreed-upon Cash Collateral rebate ("Borrower's Rebate"). The Lending Fund will be compensated based on the difference between the Borrower's Rebate and the actual return on the investment of the Cash Collateral. In the case of collateral other than cash, the Lending Agent will negotiate a loan free to be paid by the Borrower, which will likely approximate the return the Lending Fund would receive had the Borrower delivered Cash Collateral. For its services, the Lending Agent will receive fees based on a share of the revenue generated from the securities lending transactions.

8. As agent for a Lending Fund, the Lending Agent may not purchase Shares or Units with Cash Collateral unless participation in the Lending Program has been approved by the Board of each Lending Fund, including a majority of the directors or trustees who are not "interested persons" of the Lending Fund within the meaning of section 2(a)(19) of the Act ("Independent Directors"). The Board, including the Independent Directors, is required to determine that the investment of Cash Collateral in an Investment Fund is in the best interests of the shareholders of the Lending Fund.

9. In addition, the Lending Agent may not purchase Shares or Units of any Investment Fund as agent for a Lending Fund unless the Lending Fund has represented to the Lending Agent that (a) its policies generally permit the Lending Fund to engage in securities lending transactions, (b) the transactions are conducted in accordance with the guidelines of the Commission and/or its staff, (c) its policies permit the Lending Fund to purchase Shares or Units with Cash Collateral, and (d) its securities lending activities are conducted in accordance with all representations and conditions in the applications.

## Applicants' Legal Analysis

### *A. Investment of Uninvested Cash and Cash Collateral in Money Market Portfolios and Private Funds*

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or together with the securities of other investment companies, 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. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit each Affiliated Fund to use Uninvested Cash and Cash Collateral and each Other Fund to use Cash Collateral to acquire Shares in excess of the limits imposed by section 12(d)(1)(A), and each Money Market Portfolio to sell its securities to Affiliated Funds and Other Funds in excess of the limits in section 12(d)(1)(B).

3. Applicants state that none of the abuses meant to be addressed by section 12(d)(1) is created by the proposed investment of Uninvested Cash and Cash Collateral in the Money Market Portfolios. Applicants further state that access to the Money Market Portfolios will enhance each Affiliated Fund's and Other Fund's ability to manage and invest Cash Collateral and each Affiliated Fund's ability to manage and invest Uninvested Cash. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because the Money Market Portfolios will not charge a sales load, redemption fee, asset-based distribution fee or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules). In addition, in connection with approving any advisory contract, the Affiliated Fund's Board, including a majority of the Independent Directors, will consider to what extent, if any, the advisory fees charged to the

<sup>2</sup> All existing Affiliated Funds that currently intend to rely on the requested order have been named as applicants. Any existing or future Northern Entity, Affiliated Fund, Private Fund, or Other Fund may rely on the requested order in the future only in accordance with the terms and conditions stated in the application.

Affiliated Fund by its adviser should be reduced to account for reduced services provided when Uninvested Cash is invested in Money Market Portfolios. Applicants represent that if a Money Market Portfolio offers more than one class of shares, each Affiliated Fund or Other Fund will invest its Cash Collateral or Uninvested Cash (in the case of Affiliated Funds) in the class with the lowest expense ratio at the time of investment. Applicants represent that no Money Market Portfolio in which Uninvested Cash or Cash Collateral is invested will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. Sections 17(a)(1) and (2) of the Act prohibit an affiliated person of a registered investment company, or any affiliated person of the affiliated person ("Second Tier Affiliate"), acting as principal, from selling any security to, or purchasing any security from, the registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person directly or indirectly controlling, controlled by, or under common control with, the other person; and, in the case of an investment company, its investment adviser.

5. Applicants state that NTI and NTGIE, by serving as investment advisers to the Affiliated Funds (including the Money Market Portfolios), are affiliated persons of each of these entities. Applicants state that a Northern Entity may be deemed to control the Private Funds by virtue of being the Trustee, and thus may be an affiliated person of the Private Funds. Therefore, an Investment Fund may be deemed either an affiliated person, or a Second Tier Affiliate, of the Affiliated Funds. In addition, applicants indicate that if an Other Fund acquires 5% or more of a Money Market Portfolio's Shares or a Private Fund's Units, the Money Market Portfolio or Private Fund may be deemed to be an affiliated person of the Other Fund. As a result, section 17(a) may prohibit each Investment Fund from selling its Shares or Units to, and redeeming its Shares or Units from, Affiliated Funds or Other Funds.

6. Section 17(b) of the Act authorizes the Commission to 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 with the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act if 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 request an order under sections 6(c) and 17(b) to permit (a) Investment Funds to sell Shares or Units to, and redeem Shares or Units from, the Lending Funds (in connection with the investment of Cash Collateral) and (b) Money Market Portfolios to sell Shares to and redeem Shares from the Affiliated Funds (in connection with the investment of Uninvested Cash). Applicants maintain that the terms of the proposed transactions are reasonable and fair because the Affiliated Funds and the Other Funds will be treated like any other investors in the Investment Funds, and will purchase and sell Shares and/or Units on the same terms and one the same basis as Shares and/or Units are purchased and sold by all other shareholders of the Money Market Portfolios and all other unitholders of the Private Funds. Applicants assert that the proposed transactions will comply with the investment restrictions and policies of each Affiliated Fund and Other Fund. Applicants state that Cash Collateral of a Lending Fund that is a Money Market Portfolio will not be used to acquire Units of any Private Fund that does not comply with rule 2a-7 under the Act. Applicants further state that the investment of Cash Collateral will comply with all present and future Commission and staff positions concerning securities lending. Applicants state that the Private Funds will comply with the major substantive provisions of the Act, including the prohibitions against affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

8. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person or principal underwriter for a registered investment company, or a Second Tier Affiliate, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates, without an order of the Commission.

9. Applicants state that the Affiliated Funds and the Other Funds (by

purchasing and redeeming Shares and Units), the Northern Entities (by (a) managing the assets of the Affiliated Funds and the Private Funds and (b) acting as Lending Agent, investing Cash Collateral in Shares or Units, and receiving portion of the revenue generated by securities lending transactions), and the Money Maker Portfolios and Private Funds (by selling Shares or Units to, and redeeming them from, the Affiliated Funds and Other Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) and rule 17d-1. Applicants request an order in accordance with section 17(d) and rule 17d-1 to permit certain transactions incident to investment in Investment Funds.

10. Under rule 17d-1, in passing on applications for orders under section 17(d), the Commission considers whether the 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 submit that the proposed transactions meet these standards for the reasons discussed above.

#### *B. Payment of Lending Agent Fees to a Northern Entity*

1. As noted above, section 17(d) and rule 17d-1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the Commission has approved the transaction. Applicants state that a lending agent arrangement between an Affiliated Fund or Other Fund and the Lending Agent under which compensation is based on a share of the revenue generated by the Lending Agent's activities may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d-1. Consequently, applicants request an order to permit each Northern Entity, as Lending Agent, to receive fees on a share of the revenue generated from securities lending transactions undertaken pursuant to the Lending Program.

2. Each Affiliated Fund that will enter into the Lending Program will adopt the following procedures to ensure that the proposed fee arrangement and other terms governing the relationship with a Northern Entity, as Lending Agent, will be fair and meet the standards of rule 17d-1:

(a) In connection with the approval of any Northern Entity as Lending Agent

for an Affiliated Fund and implementation of the proposed fee arrangement, a majority of the Board (including a majority of the Independent Directors) will determine that (i) the securities lending agreement with the Northern Entity is in the best interests of the Affiliated Fund and its shareholders; (ii) the services to be performed by the Northern Entity are appropriate for the Affiliated Fund; (iii) the nature and quality of the services provided by the Northern Entity are at least equal to those provided by others offering the same or similar services for similar compensation; and (iv) the fees for the Northern Entity's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each Affiliated Fund's securities lending agreement with a Northern Entity for lending agent services will be reviewed annually by the Board and will be approved for continuation only if a majority of the Board (including a majority of the Independent Directors) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby a Northern Entity will be compensated as lending agent based on a percentage of the revenue generated by an Affiliated Fund's participation in the Lending Program, the Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board, including a majority of the Independent Directors, will: (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application, and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Affiliated Fund will maintain and preserve: (i) permanently, in an easily accessible place, a written copy of the procedures and conditions described in the application and (ii) for a period of not less than six years from the end of the fiscal year in which any loan transaction under the Lending Program occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the

information or materials upon which the determination was made that the loan was made in accordance with the procedures set forth above and the conditions to the application.

3. With respect to Other Funds, applicants assert that the nature of the affiliation between the Other Funds and any Northern Entity serving as Lending Agent is only technical. Applicants assert that any Northern Entity serving as Lending Agent would not have any influence over the decisions made by any Other Fund and that any fee arrangements between the Other Funds and the Northern Entities will be the product of arms-length bargaining. Accordingly, applicants believe that the proposed arrangement between Other Funds and the Northern Entities would meet the standards of rule 17d-1.

#### *C. Transactions by Other Funds With Northern Entities*

1. As noted above, sections 17(a)(1) and (2) prohibit certain principal transactions between a registered investment company and its affiliates. Applicants assert that a Northern Entity could be deemed a Second-tier Affiliate of an Other Fund that owns 5% or more of an Investment Fund.

2. Applicants request relief under sections 6(c) and 17(b) from sections 17(a)(1) and (2) to permit principal transactions between Other Funds and Northern Entities where the affiliation between the parties arises solely as a result of an investment of Cash Collateral by an Other Fund in Shares and/or Units. Applicants state that there will be no element of self-dealing because none of the Northern Entities has any influence over the decisions made by any Other Fund. Applicants assert that each transaction will be the product of arms-length bargaining. Because the interests of the Other Funds' investment advisers are solely aligned with those of the Other Funds (to which the advisers have fiduciary responsibilities), applicants believe it is reasonable to conclude that the consideration paid to or received by Other Funds in connection with a principal transaction with a Northern Entity will be reasonable and fair.

3. Section 17(e) of the Act makes it unlawful for any affiliated person of a registered investment company, or any Second-tier Affiliate, acting as broker in connection with the sale of securities to or by that registered investment company, to receive from any source a commission for effecting the transaction that exceeds specified limits. Rule 17e-1 under the Act provides that a commission shall be deemed a usual and customary broker's commission if

certain procedures are followed by the registered investment company.

4. Applicants request relief under section 6(c) from section 17(e) to the extent necessary to permit the Northern Entities to receive fees or commissions for acting as broker or agent in connection with the purchase or sale of securities for any Other Fund for which a Northern Entity becomes a Second-tier Affiliate solely because of the investment of Cash Collateral by the Other Fund in Shares and/or Units.

5. Applicants submit that brokerage or similar transactions by a Northern Entity for the Other Funds raise no possibility of self-dealing or any concern that these Other Funds would be managed in the interest of a Northern Entity. Applicants believe that each transaction between an Other Fund and a Northern Entity would be the product of arms-length bargaining because each adviser to an Other Fund would have no interest in benefiting a Northern Entity at the expense of the Other Fund.

#### **Applicants' Conditions**

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

##### *Securities Lending Program*

1. Before a Lending Fund may participate in the Lending Program, a majority of the Board (including a majority of the Independent Directors) will approve of the Lending Fund's participation in the Lending Program. Such Board also will evaluate the Lending Program and its results no less frequently than annually and a majority of the Board (including a majority of the Independent Directors) will determine that any investment of Cash Collateral in Shares and/or Units is in the best interests of the shareholders of the Lending Fund.

2. Cash Collateral of any Affiliated Fund or Other Fund that relies on rule 2a-7 under the Act will not be used to acquire Units of any Private Fund that does not comply with the requirements of rule 2a-7.

3. The approval of an Affiliated Fund's Board, including a majority of the Independent Directors, will be required for the initial and subsequent approvals of a Northern Entity's service as Lending Agent for the Affiliated Fund pursuant to the Lending Program, for the institution of all procedures relating to the Lending Program as it relates to the Affiliated Fund, and for any periodic review of loan transactions for which a Northern Entity acted as Lending Agent pursuant to the Lending Program.

4. The Lending Program of each Lending Fund will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

#### *Private Funds*

5. Each Lending Fund will purchase and redeem Units as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other holders of the Units. A separate account will be established in the unitholder records of each Private Fund for the account of each Lending Fund.

6. Each Private Fund will comply with the requirements of sections 17(a), (d), (e), and 18 of the Act as if the Private Fund was a registered open-end investment company. With respect to all redemption requests made by a Lending Fund, the Private Funds will comply with section 22(e) of the Act. The Trustee of a Private Fund shall adopt procedures designed to ensure that the Private Fund complies with sections 17(a), (d), and (e), 18 and 22(e) of the Act. Such Trustee will periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii) and 31a-1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

7. The net asset value per Unit with respect to Units of the Private Funds will be determined separately for each Private Fund by dividing the value of the assets belonging to that Private Fund, less the liabilities of that Private Fund, by the number of Units outstanding with respect to that Private Fund.

8. Any Private Fund that uses the amortized cost method of valuation, as defined in rule 2a-7 under the Act, will comply with rule 2a-7. With respect to each such Private Fund, the Trustee will adopt and monitor the procedures described in rule 2a-7(c)(7) and will take such other actions as are required to be taken under those procedures. The Lending Funds may only purchase Units of such Private Fund if the Trustee determines on an ongoing basis that the Private Fund is in compliance with rule 2a-7. The Trustee will preserve for a period of not less than six

years from the date of determination, the first two years in an easily accessible place, a record of the determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and its staff.

#### *Other Conditions*

9. Investment of Uninvested Cash in Shares and Cash Collateral in Shares and/or Units will be in accordance with each Affiliated Fund's and Other Fund's respective investment restrictions, if any, and will be consistent with its policies as recited in its prospectus and statement of additional information (and supplements thereto).

10. Shares and Unites will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

11. Before the next meeting of the Board of an Affiliated Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Northern Entity acting as investment adviser of the Affiliated Fund will provide the Board with specific information regarding the approximate cost to such investment adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Affiliated Fund that can be expected to be invested in the Money Market Portfolios. In connection with approving any advisory contract for an Affiliated Fund, the Board of the Affiliated Fund, including a majority of the Independent Directors, will consider to what extent, if any, the advisory fees charged to the Affiliated Fund by a Northern Entity should be reduced to account for reduced services provided to the Affiliated Fund by the Northern Entity as a result of Uninvested Cash being invested in the Money Market Portfolios. The minute books of the Affiliated Fund will record fully the Board's consideration in approving the advisory contract, including the consideration referred to above.

12. Each Affiliated Fund will invest Uninvested Cash in, and hold Shares of, the Money Market Portfolios only to the extent that the Affiliated Fund's aggregate investment of Uninvested Cash in the Money Market Portfolios does not exceed 25% of the Affiliated Fund's total assets.

13. Each Affiliated Fund, Money Market Portfolio and Private Fund that relies on the order will be advised by a Northern Entity.

14. Neither the Private Funds nor the Money Market Portfolios in which Cash Collateral or Uninvested Cash is

invested shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-17721 Filed 7-13-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44532; File No. SR-Amex-2001-25]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Generic Listing Standards for Portfolio Depositary Receipts and Index Fund Shares

July 10, 2001.

On May 3, 2001, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend Amex Rule 1000, Commentary .03 and Amex Rule 1000A, Commentary .02 regarding generic listing standards for Portfolio Depositary Receipts and Index Fund shares to increase from 25 percent to 30 percent the permissible weight of the most heavily weighted component stock in an underlying index.

The proposed rule change was published for comment in the **Federal Register** on June 4, 2001.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>6</sup> because it is designed to

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

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

<sup>3</sup> See Securities Exchange Act Release No. 34-44354 (May 25, 2001), 66 FR 30031.

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).