

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, fax to (202) 418-3251, or e-mail to mbtoomey@opm.gov. Please include your mailing address.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Melissa A. Drummond, Program Manager, Office of Merit Systems Oversight, Office of Merit Systems Oversight and Effectiveness, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7671, Washington, DC 20415, and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

Kay Coles James,
Director.

[FR Doc. 01-25610 Filed 10-11-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44903; File No. 4-208]

Intermarket Trading System; Order Granting Approval of the Seventeenth Amendment to the ITS Plan Relating to Regional Computer Interface, 30-Second Commitment Expiration, and the Principal Place of Business of the Boston Stock Exchange, Inc.

October 3, 2001.

On July 16, 2001, the Intermarket Trading System Operating Committee ("ITSOC") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 11A of the Securities Exchange Act of 1934 ("ACT"),¹ and Rule 11A3a3-2 thereunder,² a proposed amendment ("Seventeenth Amendment") to the restated ITS Plan.³ The proposed

amendment recognized the National Association of Securities Dealers, Inc.'s ("NASD") use of the Regional Computer Interface ("RCI"),⁴ and provided for a six-month pilot program for the use of a 30-second commitment expiration. In addition, the proposed amendment reflected the BSE's new principal place of business. Notice of the proposed amendment appeared in the **Federal Register** on August 15, 2001.⁵ The Commission received no comments on the proposed amendment. This order approves the proposed amendment.

The Commission finds that the proposed amendment is consistent with the Act and the rules and regulations thereunder applicable to the ITS and, in particular, sections 11A(a)(1)(C)(ii) and (D) of the Act,⁶ and Rule 11A3-2(c)(2) thereunder,⁷ which requires among other things, that such plan amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and removes impediments to, and perfects the mechanisms of, a national market system. Specifically, the Commission believes that the plan amendment should help to enable the NASD to use the communications network that links all the Participant markets. In addition, the Commission believes that by providing a shorter commitment expiration option of 30-seconds as a six-month pilot program, the proposed amendment should foster efficiency and enhance competition among Participant markets.

It Is Therefore Ordered, pursuant to section 11A(a)(3)(B) of the Act,⁸ that the proposed Seventeenth Amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-25702 Filed 10-11-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25205; 812-12016]

Firstmark Corp.; Notice of Application.

October 5, 2001.

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

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF THE APPLICATION: Firstmark Corp. ("Applicant") requests an order exempting it from all provisions of the Act until the earlier of one year from the date the requested order is issued or the date it no longer may be deemed to be an investment company.

FILING DATES: The application was filed on March 3, 2000 and amended on October 2, 2001.

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 Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 31, 2001 and should be accompanied by proof of service on 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicant, Three James Center, 7th Floor, 1051 Eash Cary Street, Richmond, VA 23219.

FOR FURTHER INFORMATION CONTACT:

Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714, 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 from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

¹ 15 U.S.C. 78k-1.

² 17 CFR 240.11Aa3-2.

³ The ITS is a National Market System ("NMS") plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants include the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") ("Participants").

⁴ "RCI" is defined in Section 1(34A) of the ITS Plan as the "automated linkage between the System and, and collectively, the Regional Switches and the AMEX [Display Book Manager] DBM that, when implemented, will enable members located on the floors of the Amex, BSE, the CHX, the PSE, and the PHLX to participate in the Applications."

⁵ See Securities Exchange Act Release No. 44661 (August 8, 2001), 65 FR 42904.

⁶ 15 U.S.C. 78k-1(a)(1)(C)(ii) and (D).

⁷ 17 CFR 240.11A3-2(c)(2).

⁸ 15 U.S.C. 78k-1(a)(3)(B).

⁹ 17 CFR 200.30-3(a)(29).

Applicant's Representations

1. Applicant is a Maine corporation formed in 1982. Most recently, Applicant through wholly-owned subsidiaries, was engaged primarily in the title insurance business and related services. On December 2, 1998, Applicant executed a stock purchase agreement ("Agreement") under which Applicant and its wholly-owned subsidiary, Southern Capital Acquisition Corporation ("SCAC"), would sell its principal operating subsidiary, Investor Southern Corporation ("ISC"), to Old Guard Group, Inc., a Pennsylvania corporation (the "Asset Sale"). Prior to the Asset Sale, Applicant's board of directors ("Board") adopted a resolution, effective December 15, 1998, declaring Applicant's intent to become engaged primarily in non-investment company businesses following the consummation of the Asset Sale. The Board reaffirmed this intent on March 1, 2000.

2. As a result of the Asset Sale, which occurred on March 5, 1999, Applicant, through SCAC, received \$6,750,000, and the right to receive certain additional cash payments in 2000, 2001, and 2002, if the pre-tax net income of ISC and its subsidiaries in the fiscal years ending December 31, 1999, 2000, and 2001, reached targeted goals.¹ Applicant states that it invested its cash from the Asset Sale in a money market fund registered under the Act ("Invested Proceeds") to preserve its value pending application of such assets to an acquisition of or merger with an operating business. As of March 31, 2001, the balance of the Invested Proceeds was \$4,248,000 or 84.9% of Applicant's total assets (exclusive of U.S. Government securities and cash items) on an unconsolidated basis (and approximately 92.5% on a consolidated basis). Applicant also states that as of March 31, 2001, the remaining investments of Applicant and its two wholly-owned subsidiaries, SCAC and QFAN Marketing Services, Inc. (each, a "Subsidiary"), included real estate, shares of two money market funds registered under the Act, other marketable securities, and stamps and artwork ("Other Investments"), totaling approximately \$261,515, \$6,998, \$25,719, and \$9,209, respectively. Applicant states that the Other Investments predate the Asset Sale, and that Applicant is in the process of liquidating the Other Investments, except for the investments in the money market funds.

¹ Applicant received an earn-out payment in the amount of \$167,683 for the fiscal year ending December 31, 1999.

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per cent of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines "investment securities" to include all securities except government securities, securities which are issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies, and are not relying on the exception from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

2. Applicant states that the Invested Proceeds and Other Investments may constitute "investment securities" within the meaning of section 3(a)(2) of the Act. Applicant states that because the Invested Proceeds and Other Investments represent more than 40% of its total assets (exclusive of government securities and cash items) on an unconsolidated basis, Applicant may be an investment company within the meaning of section 3(a)(1)(C) of the Act. Rule 3a-2 under the Act generally provides that, for purposes of section 3(a)(1)(C), an issuer will not be deemed to be engaged in the business of investing, reinvesting, owning, holding or trading in securities for a period not to exceed one year if the issuer has a bona fide intent to be engaged in a non-investment company business. Applicant states that it relied on the one-year "transient" investment company exception under rule 3a-2 for the period ending March 5, 2000.

3. Section 6(c) of the Act permits the Commission 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.

4. Applicant requests an exemption under section 6(c) from all provisions of the Act until the earlier of one year from the date the requested order is issued or such time as Applicant would no longer be required to register as an investment company under the Act. Applicant believes that within this period it will be able to complete an acquisition of or a merger with a new operating business.

5. Applicant states that since the Asset Sale, it has devoted substantial effort to acquire or merge with an unaffiliated business. Applicant believes that the inability to consummate an acquisition or merge was largely due to certain civil litigation matters involving the Applicant as a result of the conduct of Applicant's previous management. Applicant states that all litigation matters have now been resolved, and the payment in settlement of claims has been drawn from Invested Proceeds. Applicant states that it continues to hold the Invested Proceeds to preserve the value of assets while it pursues possible acquisitions or mergers, and it has not engaged in any speculation or trading of securities. Applicant contends that registration under the Act would involve unnecessary burden and expense for Applicant and its stockholders and would serve no regulatory purpose. Applicant thus asserts that the requested relief is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

Applicant agrees that the requested exemption will be subject to the following conditions:

1. Applicant will not purchase or otherwise acquire (directly or through a Subsidiary) any securities other than short-term U.S. Government securities, certificates of deposit, commercial paper rated A-1/P-1, and shares of registered money market funds; except that Applicant may acquire equity securities of an issuer that is not an investment company as defined in section 3(a) of the Act or is relying on an exclusion from the definition of investment company under section 3(c) of the Act other than section 3(c)(1) or 3(c)(7), in connection with the acquisition of an operating business as evidenced by a resolution approved by Applicant's Board.

2. Applicant will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding or trading in securities.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-25698 Filed 10-11-01; 8:45 am]

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