

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27847; 812-13332]

### Ameristock ETF Trust, et al.; Notice of Application

May 30, 2007.

**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 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit: (a) Open-end management investment companies, the series of which will be based on certain fixed-income securities indices, to issue shares ("Fund Shares") that can be redeemed only in large aggregations ("Creation Units"); (b) secondary market transactions in Fund Shares to occur at negotiated prices on the American Stock Exchange, LLC ("Amex") or a national securities exchange, as defined in section 2(a)(26) of the Act (each, an "Other Exchange," and together with Amex, the "Exchanges"); (c) dealers to sell Fund Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); and (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units.

**APPLICANTS:** Ameristock ETF Trust ("Trust"); Ameristock Corporation ("Adviser"); and ALPS Distributors, Inc. ("Distributor").

**FILING DATES:** The application was filed on October 5, 2006 and amended on May 29, 2007.

**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 June 25, 2007, 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 Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, Ameristock ETF Trust and Ameristock Corporation, c/o Ameristock Corporation, 1320 Harbor Bay Parkway, Suite 145, Alameda, CA 94502, and ALPS Distributors, Inc., 1290 Broadway, Suite 1100, Denver, CO 80203.

**FOR FURTHER INFORMATION CONTACT:** Laura L. Solomon, Senior Counsel, at (202) 551-6915, or Julia Kim Gilmer, Branch Chief, at (202) 551-6821 (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, 100 F Street, NE., Washington, DC 20549-0102 (telephone (202) 551-5850).

#### Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. Initially, the Trust intends to offer five series (the "Initial Index Funds") and may establish additional series in the future ("Future Index Funds," and together with the Initial Funds, "Index Funds" or "Funds").<sup>1</sup> The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will serve as the investment adviser to each of the Initial Index Funds. The Adviser may in the future retain one or more subadvisers ("Subadvisers") to manage the Index Funds' portfolios. Any Subadviser will be registered under the Advisers Act or exempt from registration. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"), will serve as the principal underwriter and distributor of Fund Shares.

2. Each Index Fund will invest in a portfolio of securities ("Portfolio Securities") selected to correspond generally, before fees and expenses, to the price and yield performance of a specified fixed income securities index

(each, an "Underlying Index" and collectively, the "Underlying Indices"). A Future Index Fund is an open-end management investment company registered under the Act, or a series thereof (including series of the Trust established in the future), that will: (a) Be designed to track the price and yield performance of a specified domestic fixed-income securities index; (b) have shares listed on an Exchange; (c) be advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (included in the defined term Adviser); and (d) comply with the terms and conditions of the application and any order granted pursuant to the application. No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, Adviser, Subadviser, Distributor, or promoter of an Index Fund.

3. An Initial Index Fund and certain Future Index Funds will invest at least 90% of their total assets in debt securities issued by the U.S. Treasury ("Treasury Securities"). Future Index Funds that seek to correspond generally to the price and yield performance of Underlying Indices that are not exclusively composed of Treasury Securities will invest at least 90% of their total assets in the component securities of their Underlying Indices (except as set forth below). Each Index Fund may also invest up to 10% of its total assets in repurchase agreements and other cash items and futures contracts, options and other derivative instruments, only in furtherance of the objective of seeking results that correspond generally to the price and yield performance, before fees and expenses, of the Fund's Underlying Index.

4. Applicants may also seek to introduce a Future Index Fund that would track the performance of an Underlying Index that holds government mortgage-backed securities ("MBS"). To the extent that an Underlying Index contains MBS, the Future Index Fund may seek to track that portion of the Underlying Index by investing either in MBS included in the Underlying Index or in to-be-announced ("TBA") transactions on MBS (and would treat the TBAs as index securities). A "TBA transaction" essentially is a purchase or sale of a pass-through security for future settlement at an agreed-upon date. Applicants state that most mortgage pass-through securities trades are executed as TBA transactions.

<sup>1</sup> The underlying indices for the Initial Index Funds will be: The Ryan Adjusted 1 Year Treasury Index, the Ryan 2 Year Treasury Index, the Ryan 5 Year Treasury Index, the Ryan 10 Year Treasury Index, and the Ryan 20 Year Treasury Index.

Applicants state that TBA transactions increase liquidity and pricing efficiency of transactions in MBS because they permit similar MBS to be traded interchangeably pursuant to commonly observed settlement and delivery requirements.

5. For Index Funds seeking to provide investment results that generally correspond, before fees and expenses, to the price and yield performance of an Underlying Index composed of a single Treasury Security, the Adviser will construct the portfolios of those Index Funds to provide a duration and cash flow profile similar to that of the Underlying Index. Other Index Funds will utilize either a replication strategy or a representative sampling strategy which will be disclosed with regard to each Index Fund in its prospectus ("Prospectus"). An Index Fund using a replication strategy will invest in the component securities in its Underlying Index in the same approximate proportions as in the Underlying Index. An Index Fund using a representative strategy will hold some, but not necessarily all of the component securities of its Underlying Index. Values for each Underlying Index will be disseminated once each Business Day.<sup>2</sup> Applicants expect that each Index Fund will have an annual tracking error relative to the performance of its respective Underlying Index of less than 5 percent.

6. Fund Shares will be sold in large aggregations, at least 100,000 shares, as specified in the relevant Prospectus. The price of a Creation Unit will range from \$1,000,000 to \$10,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Index Funds' administrator and the Distributor ("Authorized Participant"). An Authorized Participant must be a participant in the Depository Trust Company ("DTC," and such participant, "DTC Participant"). Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash, though an Index Fund may sell Creation Units on a cash-only basis in limited circumstances. An investor wishing to purchase a Creation Unit from an Index Fund will have to transfer to the Index Fund a "Portfolio Deposit" consisting of: (a) A portfolio of securities that has been selected by the Adviser or Subadviser to correspond generally to the performance of the relevant Underlying Index ("Deposit

Securities" <sup>3</sup>); and (b) a cash payment to equalize any differences between the market value per Creation Unit of the Deposit Securities and the net asset value ("NAV") per Creation Unit ("Balancing Amount").<sup>4</sup> An investor purchasing or redeeming a Creation Unit from an Index Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Index Fund incurring costs in connection with the purchase and redemption of the Creation Units.<sup>5</sup> Each Index Fund will disclose the maximum Transaction Fee charged by the Fund in its Prospectus and the method of calculating the Transaction Fees in its Prospectus or statement of additional information ("SAI").

7. Orders to purchase Creation Units of an Index Fund will be placed with the Distributor who will be responsible for transmitting orders to the Index Funds. The Distributor will issue confirmations of acceptance to purchasers of Creation Units and delivery instructions to the Trust (to implement the delivery of Creation Units), and will maintain records of the orders and confirmations. The Distributor will also be responsible for

<sup>3</sup> The Index Funds will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Redemption Securities (as defined below), including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act. In accepting Deposit Securities and satisfying redemptions with Redemption Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Index Funds will comply with the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Index Fund Portfolio Securities. The Prospectus for the Index Funds will also state that "An Authorized Participant that is not a Qualified Institutional Buyer ("QIB") will not be able to receive, as part of a redemption, securities that are restricted securities eligible for resale under Rule 144A."

<sup>4</sup> On each Business Day, prior to the opening of trading on the Exchange, the Fund's custodian will make available the list of the names and the required number of shares of each Deposit Security required for the Portfolio Deposit for the Index Fund. That Portfolio Deposit will apply to all purchases of Creation Units until a new Portfolio Deposit for the Index Fund is announced. Each Index Fund reserves the right to permit or require the substitution of an amount of cash in lieu of depositing some or all of the Deposit Securities in certain circumstances. The Exchange will disseminate every 15 seconds throughout the trading day via the facilities of the Consolidated Tape Association an amount representing, on a per Fund Share basis, the sum of the current value of the Deposit Securities and the estimated Balancing Amount.

<sup>5</sup> When an Index Fund permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed a higher Transaction Fee to offset the brokerage and other transaction costs incurred by the Index Fund to purchase the requisite Deposit Securities.

delivering Prospectuses to purchasers of Creation Units.

8. Persons purchasing Creation Units from an Index Fund may hold the Fund Shares or sell some or all of them in the secondary market. Fund Shares will be listed on an Exchange, and traded in the secondary market in the same manner as other Exchange-listed equity securities. It is expected that one or more members of the listing Exchange will act as a specialist ("Specialist"), and maintain a market on the Exchange for the Fund Shares, or, with respect to The NASDAQ Stock Market, Inc. ("NASDAQ"), the member firm will act as the "Market Maker" and maintain a market on the NASDAQ. The price of Fund Shares traded on an Exchange will be based on a current bid/offer market. Purchases and sales of Fund Shares in the secondary market will be subject to customary brokerage commissions and charges.

9. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). In providing for a fair and orderly secondary market for Fund Shares on the Exchange, the Specialist or Market Maker also may purchase Creation Units. Applicants expect that secondary market purchasers of Fund Shares will include both institutional and retail investors.<sup>6</sup> Applicants expect that the price at which the Fund Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Fund Shares will not trade at a material discount or premium in relation to their NAV.

10. Fund Shares will not be individually redeemable. Fund Shares will only be redeemable in Creation Units from an Index Fund. To redeem, an investor will have to accumulate enough Fund Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) A portfolio of securities designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted ("Redemption Securities"), which may not be identical to the Deposit Securities required to purchase Creation Units on that date, and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Balancing

<sup>2</sup> A "Business Day" is defined as any day that an Index Fund is open for business, including as required by section 22(e) of the Act.

<sup>6</sup> Fund Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Fund Shares. DTC or DTC Participants will maintain records reflecting the beneficial owners of Fund Shares.

Amount, although the actual amount of the Cash Redemption Payment may differ from the Balancing Amount if the Redemption Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Redemption Security in certain circumstances.

11. Applicants state that neither the Trust nor any Index Fund will be marketed or otherwise held out as a traditional open-end investment company or mutual fund. Rather, applicants state that each Index Fund will be marketed as an "exchange-traded fund," "ETF," "investment company," "fund" and "trust." All marketing materials that refer to redeemability or describe the method of obtaining, buying or selling Fund Shares will prominently disclose that Fund Shares are not individually redeemable and that Fund Shares may be acquired or redeemed from the Index Fund in Creation Units only. The same type of disclosure will be provided in the Prospectus, SAI, shareholder reports and investor educational materials issued or circulated in connection with Fund Shares. The Index Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Fund Shares.

#### **Applicants' Legal Analysis**

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and 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.

#### *Sections 5(a)(1) and 2(a)(32) of the Act*

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets,

or the cash equivalent. Because Fund Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Fund Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Fund Shares in Creation Units and redeem Creation Units from each Index Fund. Applicants further state that because the market price of Fund Shares will be disciplined by arbitrage opportunities, investors should be able to sell Fund Shares in the secondary market at prices that do not vary substantially from their NAV.

#### *Section 22(d) of the Act and Rule 22c-1 Under the Act*

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Fund Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Fund Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Fund Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Fund Shares to trade in the secondary market at negotiated prices. Applicants state that (a) Secondary

market trading in Fund Shares does not involve the Index Funds as parties and cannot result in dilution of an investment in Fund Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Fund Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Fund Shares and their NAV remains narrow.

#### *Section 24(d) of the Act*

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling Fund Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.<sup>7</sup>

8. Applicants state that Fund Shares will be listed on an Exchange and will be traded in a manner similar to equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a

<sup>7</sup> Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, such as purchases of Fund Shares from the Index Fund or an underwriter. Applicants state that persons purchasing Creation Units will be cautioned in the Prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Fund Shares and sells them directly to its customers, or if it chooses to couple the purchase of a supply of new Fund Shares with an active selling effort involving solicitation of secondary market demand for Fund Shares. The Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The Prospectus also will state that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Fund Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

prospectus to the purchaser. Applicants contend that Fund Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Fund Shares will be exchange-listed, prospective investors will have access to several types of market information about Fund Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. In addition, the Web site maintained for each Trust will include, for each Index Fund, the prior Business Day's NAV, the mid-point of the bid-ask spread at the time of calculation of the NAV ("Bid/Ask Price"), a calculation of the premium or discount of the Bid/Ask Price against such NAV, and data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.<sup>8</sup>

9. Investors also will receive a short product description ("Product Description"), describing an Index Fund and its Fund Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about Fund Shares that is tailored to meet the needs of investors purchasing Fund Shares in the secondary market.

#### *Section 17(a)(1) and (2) of the Act*

10. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated 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 and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Applicants state that because the definition of "affiliated person" includes any person owning 5% or more of an issuer's outstanding voting securities there exists a

possibility that, with respect to one or more Index Funds, a large institutional investor, including an Authorized Participant acquiring Creation Units, could own 5% or more, or in excess of 25%, of the outstanding Fund Shares of an Index Fund, making that investor an affiliate of the Fund under section 2(a)(3)(A) or section 2(a)(3)(C).<sup>9</sup> Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit persons that are affiliated persons of the Funds solely by virtue of holding 5% or more, or more than 25%, of the outstanding Fund Shares of one or more Index Funds (and affiliated persons of such affiliated persons and Second-Tier Affiliates that are not otherwise affiliated with the Trust or the Index Funds) to purchase and redeem Creation Units through "in-kind" transactions.

11. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the 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 policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of an Index Fund described above from purchasing or redeeming Creation Units through "in-kind" transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as the Index Fund's Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons of an Index Fund, or the affiliated persons of such affiliated persons, described above, to effect a transaction detrimental to other holders of Fund Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Index Fund.

<sup>9</sup> There also exists the possibility in the future that a large institutional investor could own 5% or more, or more than 25%, of the outstanding voting securities of one or more other registered investment companies (or series thereof) advised by the Adviser, making the investor an affiliate of an affiliate of the Funds (a "Second Tier Affiliate").

#### **Applicants' Conditions**

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

1. Each Index Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Fund Shares are issued by each Index Fund, which is a registered investment company, and that the acquisition of Fund Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

2. As long as a Trust operates in reliance on the requested order, the Fund Shares will be listed on an Exchange.

3. Neither a Trust nor any Index Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Index Fund's Prospectus will prominently disclose that Fund Shares are not individually redeemable shares and will disclose that the owners of Fund Shares may acquire those Fund Shares from the Index Fund and tender those Fund Shares for redemption to the Index Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Fund Shares are not individually redeemable and that owners of Fund Shares may acquire those Fund Shares from the Index Fund and tender those Fund Shares for redemption to the Index Fund in Creation Units only.

4. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Fund Share basis, for each Index Fund: (a) The prior Business Day's NAV and the Bid/Ask Price and a calculation of the premium or discount of such Bid/Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Index Fund will state that the Web site of the Trust has information about the premiums and discounts at which the Index Fund's Fund Shares have traded.

5. The Prospectus and annual report for each Index Fund will also include: (a) The information listed in condition 4(b), (i) In the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Fund Share basis for

<sup>8</sup> The Bid/Ask Price per Fund Share of an Index Fund is determined using the highest bid and the lowest offer on the primary listing Exchange at the time of calculation of such Index Fund's NAV.

one, five and ten year periods (or life of the Index Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

6. Before an Index Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Fund Shares to deliver a Product Description to purchasers of Fund Shares.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27848; 812-13341]

### John Hancock Trust, et al.; Notice of Application

May 30, 2007.

**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") for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

#### SUMMARY OF THE APPLICATION:

Applicants request an order that would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts that are within and outside the same group of investment companies.

**APPLICANTS:** John Hancock Trust ("JHT"), John Hancock Funds II ("JHF II"), John Hancock Funds III ("JHF III"), John Hancock Capital Series ("JHCS," and collectively, "Trusts"), and John Hancock Advisers, LLC ("JHA") and John Hancock Investment Management Services, LLC ("JHIMS," each an "Adviser," together the "Advisers").

**FILING DATES:** The application was filed on November 7, 2006 and amended on May 23, 2007.

**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 June 25, 2007, 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 Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants: c/o Mark P. Goshko, Kirkpatrick & Lockhart Preston Gates Ellis LLP, State Street Financial Center, One Lincoln Street, Boston, Massachusetts 02111-2950.

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel, at (202) 551-6990, or Nadya Roytblat, Assistant Director, at (202) 551-6821 (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 Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549-0102 (telephone (202) 551-5850).

#### Applicants' Representations

1. The Trusts, organized as Massachusetts business trusts, are registered under the Act as open-end management investment companies and offer multiple series advised by the Adviser ("Portfolios").<sup>1</sup> JHT currently offers 110 Portfolios, JHF II currently offers 96 Portfolios, JHF III currently offers 13 Portfolios and JHCS currently offers 8 Portfolios. Shares of JHT are offered only to registered separate accounts ("Registered Separate Accounts") of the John Hancock Life Insurance Company (U.S.A.) ("JHLICO

<sup>1</sup> Applicants request that the order also extend to any future Portfolios of the Trusts, and any other existing or future registered open-end management investment companies and any series thereof that are part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts and are, or may in the future be, advised by the Advisers or any other investment adviser controlling, controlled by, or under common control with the Advisers ("Fund(s)"). The Trusts are the only registered investment companies that currently intend to rely on the requested order. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application.

(USA)"), the John Hancock Life Insurance Company of New York ("JHLICO New York), the John Hancock Life Insurance Company, and the John Hancock Variable Life Insurance Company (collectively, "Insurance Companies"), as the underlying investment vehicles for the variable life insurance and variable annuity contracts ("Variable Contracts") issued by the Insurance Companies. Shares of JHF II are offered directly to the public as well as to certain separate accounts of JHLICO (USA) and JHLICO New York that are not registered as investment companies under the Act in reliance on section 3(c)(11) ("Unregistered Separate Accounts" and together with the Registered Separate Accounts, the "Separate Accounts"). Shares of JHF III and JHCS are offered directly to the public.

2. The Advisers are each a Delaware limited liability company which is registered as an investment adviser under the Investment Advisers Act of 1940. JHA is a wholly-owned subsidiary of John Hancock Financial Services, Inc., a subsidiary of Manulife Financial Corporation and serves as investment adviser for each of the JHCS Funds. JHIMS is an indirect, wholly-owned subsidiary of JHLICO USA and serves as the investment adviser for each of the JHT, JHF II and JHF III Funds.

3. Applicants request relief to permit: (a) A Fund (each a "Fund of Funds") to acquire shares of registered open-end management investment companies that are not part of the same group of investment companies as the Fund of Funds (the "Unaffiliated Investment Companies") and unit investment trusts ("UITs") that are not part of the same group of investment companies as the Fund of Funds ("Unaffiliated Funds," and together with Unaffiliated Investment Companies, "Unaffiliated Funds"); (b) the Unaffiliated Funds to sell their shares to the Funds of Funds; (c) the Fund of Funds to acquire shares of certain other Funds in the same group of investment companies as the Fund of Funds (the "Affiliated Funds," and together with the Unaffiliated Funds, the "Underlying Funds") and (d) the Affiliated Funds to sell their shares to the Fund of Funds. Certain of the Unaffiliated Funds may be registered under the Act as either UITs or open-end management investment companies and have received exemptive relief to permit their shares be listed and traded on a national securities exchange at negotiated prices ("ETFs"). Each Fund of Funds also may invest in government securities, domestic and foreign common and preferred stock, income-bearing securities, certain types of