

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-95-45 and should be submitted by February 20, 1996.

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

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36746; International Series Release No. 919; File No. SR-PHLX-95-13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Modifications of the Position and Exercise Limits for Foreign Currency Options

January 19, 1996.

On March 10, 1995, as subsequently amended below, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend PHLX Rules 1001, "Position Limits,"³ and 1002, "Exercise Limits,"⁴ to increase the position and exercise limits for all foreign currency options

("FCOs"), except for options on the Italian lira and the Spanish peseta, to 200,000 contracts.⁵ The PHLX subsequently filed Amendment Nos. 1, 2,⁶ and 3⁷ to the proposed rule change on April 5, 1995, May 2, 1995, and December 20, 1995, respectively.

Notice of the proposed rule change and Amendment Nos. 1 and 2 appeared in the Federal Register on May 16, 1995.⁸ No comments were received on the proposal.

Currently, PHLX Rules 1001 and 1002 establish the following position and exercise limits for FCOs: (i) 150,000 contracts for FCOs which meet an annual trading volume of at least 3,500,000 contracts; and (ii) 100,000 contracts for all other FCOs traded on the PHLX. The PHLX proposes to amend Exchange Rules 1001 and 1002 to increase the position and exercise limits for all FCOs, except for options on the Italian lira and the Spanish peseta,⁹ to 200,000 contracts.

PHLX FCO position and exercise limits were set initially at 10,000 contracts in 1982, when FCOs first began trading on the Exchange.¹⁰ Since

that time, the position and exercise limits have been raised four times.¹¹ In 1993, the Exchange filed a proposal to adopt a two-tiered approach to FCO position and exercise limits, which was approved by the Commission in September 1994.¹² According to the PHLX, many of the factors cited at that time continue to indicate that FCO position and exercise limits warrant an increase to 200,000 contracts. For example, the Chicago Mercantile Exchange ("CME") substituted "position accountability standards"¹³ for position limits for futures and futures options on certain foreign currencies.¹⁴ As a result, the PHLX believes that the Exchange is placed at a serious competitive disadvantage.

In addition, the Exchange has commenced trading customized FCOs,¹⁵ in which positions are aggregated with other FCO positions in the underlying currency; however, customized option trading volume is not included in the volume calculation to determine the applicable position limit under the current two-tiered system. In addition to customized options, there are also other FCO products that are aggregated for position and exercise limit purposes, including long-term, month-end, cash/spot, and American- and European-style FCOs.¹⁶ According to the PHLX, FCO

⁵ See note 7, *infra*, and accompanying text.

⁶ On April 5, 1995, the PHLX submitted a revised version of the text of the proposed rule change, which amends the text to indicate that the proposed position and exercise limit for FCOs is 200,000 contracts. See Letter from Edith Hallahan, Special Counsel, Regulatory Services, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated April 5, 1995 ("Amendment No. 1"). On April 26, 1995, the PHLX amended PHLX Rule 1001, Commentary .05(c), to (1) replace references to the current FCO position limits with references to the proposed FCO position limit; (2) designate current paragraph (c) as paragraph (b), in order to reflect the deletion of current paragraph (b); and (3) provide that the position and exercise limit for customized and non-customized contracts on the German mark/Japanese yen cross-rate and the British pound/German mark cross-rate options, as well as for cross-rate options traded pursuant to PHLX Rule 1069, "Customized Foreign Currency Options," is 200,000 contracts. See Letter from Edith Hallahan, Special Counsel, Regulatory Services, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated April 26, 1995 ("Amendment No. 2").

⁷ The PHLX amended its proposal to provide that options on the Italian lira and the Spanish peseta will continue to be subject to their current position and exercise limits of 100,000 contracts. The Exchange also indicated that, under the proposal, the aggregation principles provided in PHLX Rule 1001 will continue to apply. See Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated December 20, 1995 ("Amendment No. 3").

⁸ See Securities Exchange Act Release No. 35688 (May 8, 1995), 60 FR 26062.

⁹ As noted above, the position and exercise limits for options on the Italian lira and the Spanish peseta will continue to be 100,000 contracts. See Amendment No. 3, *supra* note 7.

¹⁰ See Securities Exchange Act Release No. 19313 (October 14, 1982), 47 FR 46946 (October 21, 1982) (order approving File No. SR-PHLX-81-4).

¹¹ See Securities Exchange Act Release Nos. 21676 (January 18, 1985), 50 FR 3859 (January 28, 1985) (order approving File No. SR-PHLX-84-18 (increasing position limits from 10,000 to 25,000 contracts); 22479 (September 27, 1985), 50 FR 41276 (October 9, 1985) (order approving File No. SR-PHLX-85-22) (increasing position limits to 50,000 contracts); 23710 (October 15, 1986), 51 FR 37691 (October 23, 1986) (order approving File No. SR-PHLX-86-24) (increasing position limits to 100,000 contracts); and 34712 (September 23, 1994), 59 FR 50307 (October 3, 1994) (order approving File No. SR-PHLX-93-13) (adopting position limit of 150,000 contracts for FCOs with annual trading volume of at least 3,500,000 contracts).

¹² See Securities Exchange Act Release No. 34712, *supra* note 10.

¹³ Position accountability standards require traders who own or control positions in excess of established limits to provide to the exchange, upon request, information regarding the nature of the position and the trading strategy employed.

¹⁴ See Letter from Jean A. Webb, Secretary, Commodity Futures trading Commission ("CFTC"), to Todd E. Petzel, Senior Vice President, Research, and Chief Economist, CME, dated January 2, 1992. See also Speculative Position Limits—Exemption from CFTC Rule 1.61; CME Proposed Amendments to Rules 3902.D, 5001.E, 3010.F, 3012.F, 3013.F, 3015.F, 4604, and Deletion of Rules 3902.F, 5001.G, 3010.H., 3012.H, 3013.H, and 3015.H.

¹⁵ See Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (order approving File No. SR-PHLX-94-18).

¹⁶ See e.g., Securities Exchange Act Release Nos. 30672 (May 6, 1992), 57 FR 20546 (May 13, 1992) (order approving File No. SR-PHLX-91-30) (aggregating long-term FCOs); 30945 (July 21, 1992), 57 FR 33381 (July 28, 1992) (order approving File No. SR-PHLX-92-13) (aggregating month-end FCOs); 33732 (March 8, 1994), 59 FR 12023 (March

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR § 240.19b-4 (1995).

³ Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (i.e., aggregating long calls and short puts or long puts and short calls).

⁴ Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

participants have continued to accumulate positions near existing limits. If large traders continue to be restricted by the current position and exercise limit levels, the PHLX believes that trading interest could migrate to the over-the-counter ("OTC") market, hampering PHLX liquidity. The Exchange believes that a higher position and exercise limit may enable such traders to consider, or return to, an exchange marketplace for their FCO trading, thereby increasing the liquidity of the PHLX's FCO markets. The PHLX believes that increases are particularly appropriate because the FCO market attracts a large number of institutional and corporate investors with substantial hedging needs. According to the Exchange, these investors utilize the PHLX marketplace by participating in block size transactions in FCOs to hedge exposure to fluctuations in exchange rates.

Since the most recent increase in position and exercise limits, the Exchange has continued to examine FCO position and exercise limits in light of the underlying currency market. The PHLX estimates that the size of the worldwide currency market has grown exponentially. For example, in 1989, total gross global foreign exchange turnover was estimated to be \$932 billion per day and net global turnover was estimated to be \$640 billion per day.¹⁷ In 1992, total gross global foreign exchange turnover was estimated to be \$1.354 billion per day, which represents a 35% increase since 1989. Further, global "net-net" exchange market turnover was estimated at \$880 billion; this takes into account local and cross-border double counting and estimated gaps in reporting.¹⁸

Further, the PHLX believes that, as a percentage of total global currency turnover, the impact of a PHLX FCO position, even at 200,000 contracts, is minimal.¹⁹

15, 1994) (order approving File No. SR-PHLX-93-10) (aggregating cash/spot FCOs); and 24859 (August 27, 1987), 52 FR 33493 (September 3, 1987) (order approving File No. SR-PHLX-87-24) (aggregating European-style contracts).

¹⁷ See Bank for International Settlements ("BIS") Central Bank Survey of Foreign Exchange Market Activity in 1989.

¹⁸ See BIS Central Bank Survey of Foreign Exchange Market Activity in April 1992 (March 1993).

¹⁹ According to the PHLX, 200,000 contracts would represent less than 2% of the daily international currency transaction volume in the Deutsche mark; 22% of the daily international currency transaction volume in the Australian dollar; 5% of the daily international currency transaction volume in the British pound; 16% of the daily international currency transaction volume in the Canadian dollar; 19% of the daily international currency transaction volume in the French franc;

The Exchange also believes that the proposed increase is reasonable in light of prior position and exercise limit increases. The 1992 increase represents a 50% increase in the two affected options. Previously, the Commission approved increases of 150%, 100%, and 100%.²⁰ Accordingly, the PHLX believes that the current proposal to raise by 100% the position and exercise limits for all FCOs, except options on the Italian lira and the Spanish peseta, is in line with prior changes, and specifically does not create a higher increase than any prior one.

Because of the large size of the underlying market in foreign currencies, the PHLX does not believe that manipulative concerns would be enhanced if the limits for FCOs were increased. In this regard, the Exchange notes that its surveillance procedures are designed to detect violations of these limits. In addition, the PHLX notes that the proposal will eliminate the fluctuations in limits inherent in a volume-based approach.

For these reasons, and in light of these market changes, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest. The PHLX believes that the proposal will increase the depth and liquidity of the FCO market which, in turn, should result in position and exercise limit levels that serve the purposes of protecting investors and the public interest as well as preventing unfair acts and practices, such as manipulation.

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 and, in particular, the requirements of Section 6(b)(5).²¹ Specifically, the Commission believes that the proposal to increase the

8% of the daily international currency transaction volume in the Swiss franc; and 4% of the daily international currency transaction volume in the Japanese yen. See Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated May 18, 1995.

²⁰ In 1985, the first increase from 10,000 contracts to 25,000 contracts represented a 150% change while the second increase from 25,000 to 50,000 contracts represented a 100% increase; similarly, the 1986 change to 100,000 contracts represented a 100% change. The proposed changes, from 150,000 to 200,000 contracts, and from 100,000 to 200,000 contracts, represent changes of 33% and 100%, respectively.

²¹ 15 U.S.C. § 78f(b)(5) (1988 & Supp. V 1993).

position and exercise limits for all FCOs, except for options on the Italian lira and the Spanish peseta, should help to accommodate the needs of investors and market participants while helping to increase the depth and liquidity of the PHLX's FCO market. The proposal should also simplify the PHLX's rules by establishing limits that will not change periodically based on trading volume in the FCO as exists under the PHLX's current rules.

The Commission believes, as it has stated in the past, that although position and exercise limits for FCOs must be sufficient to protect the options and related markets from disruptions by manipulation, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market.²² In its proposal, the PHLX states that the FCO market attracts a large number of corporate and institutional investors who have substantial needs and who execute block-sized transactions in FCOs. In addition, the PHLX believes that trading could migrate to the OTC market if traders continue to be restricted by the PHLX's current FCO position and exercise limits. In light of the size of the FCO market and the needs of FCO investors and market makers, the Commission believes that the PHLX's proposal is a reasonable effort to accommodate the needs of market participants and to help the Exchange remain competitive with the OTC market for FCOs.

At the same time, the Commission does not believe that the proposal significantly increases concerns regarding intermarket manipulations or disruptions of the markets for FCOs or the underlying currencies. The Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprise of banks and other financial institutions worldwide.²³ That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active OTC market also exists in FCOs.

Moreover, the absence of discernible manipulative problems under the current FCO position and exercise limits leads the Commission to conclude that

²² See Securities Exchange Act Release Nos. 22479 and 34712, *supra* note 10.

²³ See Securities Exchange Act Release No. 31627 (December 21, 1992), 57 FR 62399 (December 30, 1992) (order approving File No. SR-Amex-92-36).

the proposed increase is warranted. The Commission recognizes, as it has stated in the past, that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns.²⁴ The PHLX and the Commission, however, have relied largely on the absence of discernible manipulation or disruption problems under the current limit as an indicator that additional increase can be safely considered. The Commission believes for these reasons that the proposed liberalization of existing FCO position and exercise limits is appropriate.²⁵

In addition, the Commission believes that the PHLX's surveillance programs will be adequate to detect and deter position and exercise limit violations by market participants as well as detect and deter attempted manipulative activity and other trading abuses.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. Specifically, Amendment No. 3 clarifies the Exchange's proposal by indicating that the proposed rule change does not alter the aggregation principles contained in PHLX Rule 1001. In addition, Amendment No. 3 provides that the position and exercise limits for options on the Italian lira and the Spanish peseta will continue to be 100,000 contracts. This clarification was necessary because at the time the proposal was originally submitted the PHLX did not have approval to trade those FCOs. In addition, the Commission believes that the 100,000 contract limit for options on the Italian lira and the Spanish peseta should remain unchanged at this time because the PHLX trades only customized options on those currencies and the market for those currencies may not be as deep and liquid as the market for other FCOs traded by the PHLX. Based on the above, the Commission finds good cause to accelerate approval of Amendment No. 3.

²⁴ See Securities Exchange Act Release No. 33288 (December 3, 1993), 58 FR 65221 (December 13, 1993) (order approving File No. SR-PHLX-93-07).

²⁵ The Commission continues to believe that proposals to increase position and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, the Commission has concluded that the exercise limit increase does not raise manipulation problems or increase concerns over market disruption in the underlying currencies.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 8, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-PHLX-95-13), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-1471 Filed 1-26-96; 8:45 am]

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[Rel. No. IC-21693; File No. 811-2155]

Select Capital Growth Fund, Inc.

January 22, 1996.

AGENCY: U.S. Securities and Exchange Commission ("SEC").

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

APPLICANT: Select Capital Growth Fund, Inc. ("Select Capital").

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Application seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 19, 1995.

²⁶ 15 U.S.C. § 78s(b)(2) (1982).

²⁷ 17 CFR 200.30-3(a)(12) (1995).

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 Secretary of the SEC 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 February 16, 1996, 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 Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549; Applicant, 20 Washington Avenue South, Minneapolis, Minnesota 55401.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Patrice M. Pitts, Special Counsel, Division of Investment Management (Office of Insurance Products), at (202) 942-0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. Select Capital is organized as a Minnesota corporation, and is registered under the 1940 Act as an open-end diversified management investment company. On December 28, 1970,¹ Applicant filed a registration statement under Section 8(b) of the 1940 Act, and a registration statement on Form S-5 under the Securities Act of 1933 registering an unlimited number of shares of common stock, having no designated par value (File No. 2-39128). The Form S-5 registration statement became effective on August 13, 1971, and the initial public offering commenced on August 16, 1971.

2. Applicant's only security holders were Northwestern National Life Insurance Company ("NWNL") and sub-accounts of NWNL Select Variable Account and Select*Life Variable Account (the "Variable Accounts").

3. On November 1, 1994, Applicant's board of directors unanimously (i) approved the substitution of shares of the Growth Portfolio of the Variable Insurance Products Fund (the "Fidelity Growth Portfolio") for shares of Applicant held by the Variable

¹ This date is derived from the SEC's computerized data retrieval system.