

that Aetna would bear the costs of the reorganization; and (h) the tax consequences expected to result from the reorganization. The board also considered ALIAC's proposal for managing the assets of the Portfolios, whereby after the reorganization, ALIAC and its affiliate, Aeltus Investment Management, Inc., would be the investment adviser and subadviser, respectively, to the International Growth Fund, subject to shareholder approval.

7. Applicants contemplate that the Plan will be submitted for approval by the shareholders of the Asian Growth Fund at a meeting scheduled to be held on or about August 28, 1996. A registration statement containing a combined prospectus/proxy statement has been filed with the SEC. The prospectus/proxy statement will be sent to shareholders of the Asian Growth Fund on or about July 25, 1996. Shareholders of the Select Class and Adviser Class shares of the Asian Growth Fund will vote together as a single class. Assuming that the required shareholder vote is obtained at the shareholders' meeting, the closing is expected to be held August 30, 1996.

8. Applicants agree not to make any material changes to the Plan that affect representations in the application without the prior approval of the SEC.

#### Applicants' Legal Analysis

1. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, acting as principal, from selling to or purchasing from such registered company, any security or other property.

2. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include, among other persons, any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; any person directly or indirectly controlling, controlled by, or under common control with, such other person; and, if such other person is an investment company, any investment adviser thereof.

3. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

4. Rule 17a-8 under the Act exempts from section 17(a) mergers, consolidations, or purchases or sales of substantially all the assets involving registered investment companies that may be affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers provided that certain conditions are satisfied. The reorganization may not be exempt from the prohibitions of section 17(a) by reason of rule 17a-8 because Aetna owns 5% or more of the outstanding voting securities of each Portfolio. Consequently, applicants are requesting an order under section 17(b) exempting the transactions from section 17(a) to the extent necessary to consummate the reorganization.

5. Applicants believe that the reorganization is consistent with the policies of the Portfolios and that the participation of Aetna in the reorganization would not be on a basis that is more advantageous than that of the Portfolios. Applicants believe that the terms of the proposed reorganization satisfy the standards set forth in section 17(b).

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

Margaret H. McFarland,  
Deputy Secretary.

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[Rel. No. IC-22072; 812-10034]

#### Pacific Horizons Funds, Inc., et al.; Notice of Application

July 15, 1996.

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

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

**APPLICANTS:** Pacific Horizon Funds, Inc. ("Pacific Horizon"), Master Investment Trust, Series I ("MIT I"), Master Investment Trust, Series II ("MIT II"), Seafirst Retirement Funds ("Seafirst"), Time Horizon Funds ("Time Horizon"), each existing and future series of the above-named funds, and existing and future registered investment companies or series thereof that, now or in the future, are advised by Bank of America National Trust and Savings Association ("Bank of America") or an entity controlling, controlled by, or under common control with Bank of America and any feeder fund that invests substantially all of its assets in any such investment company or series thereof

(the "Funds"); Bank of America; and Concord Financial Group, Inc. ("Concord").<sup>1</sup>

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) for an exemption from section 12(d)(1)(A)(ii), under sections 6(c) and 17(b) for an exemption from section 17(a)(1) and 17(a)(2), and under rule 17d-1 to permit certain transactions in accordance with section 17(d) and rule 17d-1.

**SUMMARY OF APPLICATION:** Applicants seek an order that would permit certain Funds to use their cash reserves to purchase shares of affiliated money market funds.

**FILING DATES:** The application was filed on March 6, 1996 and was amended on May 29, 1996. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 9, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Pacific Horizon, MIT II, Time Horizon, and Concord, 3435 Stelzer Road, Columbus, Ohio 43219; MIT I c/o Concord (Cayman Islands) Limited, Bank of America Building, Fort Street, George Town, Grand Cayman, Cayman Islands, British West Indies; Seafirst, 701 Fifth Avenue, Seattle, Washington 98104; and Bank of America, 555 California Street, San Francisco, California 94104.

**FOR FURTHER INFORMATION CONTACT:** Marianne H. Khawly, Staff Attorney, at (202) 942-0562, or Alison E. Baur, 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

<sup>1</sup> All existing funds that presently intend to rely on the requested order are named as applicants.

may be obtained for a fee from the SEC's Public Reference Branch.

#### Applicants' Representations

1. Each Fund is an open-end management investment company organized in series form. Six of the Pacific Horizon series are money market funds subject to the requirements of rule 2a-7 under the Act ("Money Market Funds"). The remaining nine Pacific Horizon series and all of the existing series of MIT I, MIT II, Seafirst, and Time Horizon are variable net asset value funds ("Non-Money Market Funds"). Five of Pacific Horizon's Non-Money Market Funds and Seafirst's three series are organized as feeder funds that seek to achieve their investment objective by investing substantially all of their assets in corresponding series of MIT I, MIT II, or future master funds advised by Bank of America or an entity controlling, controlled by, or under common control with Bank of America ("Feeder Funds").

2. Bank of America (the "Adviser") serves as investment adviser to each of the Funds except for the Feeder Funds, which have no investment adviser. The Adviser is a subsidiary of BankAmerica Corporation, a bank holding company. Concord, a subsidiary of Concord Holding Corporation, serves as distributor for each Pacific Horizon, Seafirst, and Time Horizon series. MIT I and MIT II have no distributor because they are offered in private placements.

3. The Money Market Funds seek current income, liquidity, and capital preservation by investing exclusively in short-term money market instruments, such as U.S. government securities, bank obligations, commercial paper, municipal obligations, and repurchase agreements secured by government securities. These short-term debt securities are valued at their amortized cost in accordance with the requirements of rule 2a-7. The Non-Money Market Funds invest in a variety of debt and/or equity securities in accordance with their respective investment objectives and policies.

4. Applicants request an order that would permit: (a) Each of the Non-Money Market Funds to utilize cash reserves that have not been invested in portfolio securities ("Uninvested Cash") to purchase shares of one or more of the Money Market Funds, and (b) each Money Market Fund to sell shares to, and redeem such shares from, a Non-Money Market Fund. Applicants also request relief that would permit the Non-Money Market Funds to invest Uninvested Cash in a Money Market Fund in excess of the percentage limitations of section 12(d)(1)(A)(ii) of

the Act. Applicants propose that each Non-Money Market Fund be permitted to invest in shares of a Money Market Fund provided that each Non-Money Market Fund's aggregate investment in such Money Market Fund does not exceed the greater of 5% of such Non-Money Market Fund's total net assets or \$2.5 million. Applicants will comply with all other provisions of section 12(d)(1).

5. By investing Uninvested Cash in the Money Market Funds, applicants believe that the Non-Money Market Funds will be able to combine these cash balances and thereby reduce their transaction costs, create more liquidity, enjoy greater returns, and further diversify their holdings. The policies of the Non-Money Market Funds either now permit, or will be amended to permit, the Non-Money Market Funds to purchase money market instruments, including shares of a Money Market Fund.

6. The shareholders of the Non-Money Market Funds would not be subject to the imposition of double advisory fees. The Adviser, Concord, and each of their affiliated persons will remit to the respective Non-Money Market Fund, or waive, an amount equal to the investment advisory or other asset-based fees the Adviser, Concord, and each of their affiliated persons earn as a result of the Non-Money Market Fund's investments in the Money Market Funds to the extent such fees are based upon the Non-Money Market Fund's assets invested in shares of the Money Market Funds (the "Reduction Amount"). Further, neither the Money Market Funds nor Concord will charge a sales charge, contingent deferred sales charge, a distribution fee under a plan adopted in accordance with the requirements of rule 12b-1 under the Act, or other underwriting or distribution fees to the Non-Money Market Funds with respect to those Funds' purchase or redemption of Money Market Fund shares. If a Money Market Fund offers more than one class of shares, each Non-Money Market Fund will invest only in the class with the lowest expense ratio that does not impose a sales charge, contingent deferred sales charge, rule 12b-1 fee, or other underwriting or distribution fee at the time of the investment.

7. The Adviser, Concord, and/or each of their affiliated persons currently or in the future may waive fees or reimburse expenses (an "Expense Waiver"). Any Expense Waiver will not limit the advisory fee waiver or remittance discussed above.

#### Applicants' Legal Analysis

1. Sections 17(a)(1) and 17(a)(2) make it unlawful for any affiliated person of a registered investment company, or an affiliated person of such affiliated person, acting as principal, to sell any security to, or purchase any security from, such investment company. Because each Fund may be deemed to be under common control with the other Funds, it is an "affiliated person," as defined in section 2(a)(3) of the Act, of the other Funds. Accordingly, the sale of shares of the Money Market Funds to the Non-Money Market Funds and the redemption of such shares of the Money Market Funds from the Non-Money Market Funds, would be prohibited under section 17(a).

2. Section 17(b) authorizes the SEC 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, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Under section 6(c), the SEC may exempt a series of transactions from any provision of the Act or any rule or regulation thereunder 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. Thus, applicants request relief under sections 6(c) and 17(b) because they wish to engage in a series of transactions rather than a single transaction.

3. The Non-Money Market Funds will retain their ability to invest their cash balances directly in money market instruments if they believe they can obtain a higher return. Each of the Money Market Funds has the right to discontinue selling shares to any of the Non-Money Market Funds if its board of directors/trustees determines that such sales would adversely affect the portfolio management and operations of such Money Market Fund. Therefore, applicants believe that the proposal satisfies the standards for relief.

4. Section 17(d) and rule 17d-1 prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Each Non-Money Market Fund, the Adviser, and each of the Money Market Funds could be

considered participants in a joint enterprise or other joint arrangement within the meaning of section 17(d)(1) and rule 17d-1.

5. Under rule 17d-1, the SEC may permit a proposed joint transaction if participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act, and not on a basis different from or less advantageous than that of the other participants. Applicants believe that their proposal satisfies these standards.

6. Section 12(d)(1)(A)(ii) prohibits a registered investment company from acquiring the securities of another investment company if, immediately thereafter, the acquiring company would have more than 5% of its total assets invested in the securities of the selling company. Applicants request an exemption from section 12(d)(1)(A)(ii) to permit each Non-Money Market Fund to invest in a Money Market Fund the greater of 5% of such Non-Money Market Fund's total net assets or \$2.5 million. Applicants submit that the perceived abuses section 12(d)(1) sought to address include undue influence by an acquiring fund over the management of an acquired fund, layering of fees, and complex structures. Applicants believe that none of these concerns are presented by the proposed transactions and that the proposed transactions meet the section 6(c) standards for relief.

#### Applicants' Conditions

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

1. The shares of the Money Market Funds sold to and redeemed from the Non-Money Market Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1, or service fee (as defined in section 26(b)(9) of the NASD Rules of Fair Practice).

2. Before the next meeting of the board of directors/trustees of a Non-Money Market Fund is held for the purpose of voting on an advisory contract under section 15, the Adviser to the Non-Money Market Fund will provide the board of directors/trustees with specific information regarding the approximate cost to the Adviser for, or portion of the advisory fee under the existing advisory fee attributable to, managing the assets of the Non-Money Market Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract under section 15, the board of directors/trustees of the Non-Money Market Fund, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19), shall

consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser should be reduced to account for the reduction of these services to the Non-Money Market Fund by the Adviser under the advisory contract as a result of a portion of the assets of the Non-Money Market Fund being invested in the Money Market Funds. The minute books of the Non-Money Market Fund will record fully the board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Non-Money Market Fund will be permitted to invest Uninvested Cash in, and hold shares of, a single Money Market Fund, so long as such Non-Money Market Fund's aggregate investment in such Money Market Fund does not exceed the greater of 5% of such Non-Money Market Fund's total net assets or \$2.5 million.

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

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37440; File No. SR-DTC-96-07]

#### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Modify Certain Provisions of the Fund/SERV Interface Agreement to Accommodate Same-Day Funds Settlement

July 15, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 6, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-96-07) as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The purpose of the proposed rule change is to modify certain provisions

of DTC's Fund/SERV Interface Agreement ("Fund/SERV Agreement") with the National Securities Clearing Corporation ("NSCC") because of the conversion of DTC's money settlement system entirely to a same-day funds settlement ("SDFS") system.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1989, DTC established an interface with NSCC to allow DTC participants that were not Fund/SERV members to access NSCC's Fund/SERV system.<sup>3</sup> Several provisions of the Fund/SERV Agreement between DTC and NSCC relating to settlement must be modified because of the conversion to SDFS.<sup>4</sup>

The Fund/SERV Agreement currently provides that DTC participants that participate in the Fund/SERV interface are required to make an additional deposit to DTC's next-day funds settlement ("NDFS") participants fund. Under DTC's SDFS system, there no longer is a separate NDFS participants fund. Furthermore, each participant's Fund/SERV activity now will be included in the formula used to determine the amount of that participant's required deposit to DTC's

<sup>2</sup> The Commission has modified the text of the summaries submitted by DTC.

<sup>3</sup> Fund/SERV is a centralized, automated processing system for mutual fund purchases and redemptions. For a further description of Fund/SERV and DTC's interface with NSCC, refer to Securities Exchange Act Release Nos. 25146 (November 20, 1987), 52 FR 45418 [File No. SR-NSCC-87-08] (order granting permanent approval to NSCC's Fund/SERV); 31937 (March 1, 1993), 58 FR 12609 [File No. SR-NSCC-92-14] (order approving modifications to NSCC's Fund/SERV); and 27056 (July 24, 1989), 54 FR 31752 [File No. SR-DTC-89-09] (order approving DTC's Fund/SERV interface with NSCC).

<sup>4</sup> For further information regarding DTC's SDFS system, refer to Securities Exchange Act Release No. 35720 (May 16, 1995), 60 FR 27360 [File No. SR-DTC-95-06] (order granting accelerated approval of a proposed rule change modifying the SDFS system).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).