

Dated at Rockville, Maryland, this 3d day of December, 1997.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-32270 Filed 12-9-97; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

Time and date: 1:00 p.m., December 10, 1997.

Place: OPM Conference Center, Room 1350, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415-0001. The conference center is located on the first floor.

Status: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

Matters to be Considered: The National Partnership Council will complete its discussion of and adopt its strategic action plan and meeting schedule for calendar year 1998. The Council will also complete its review of the draft 1998 Report to the President on the Progress of Labor-Management Partnerships.

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415-0001, (202) 606-2930.

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 97-32285 Filed 12-9-97; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1998, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1998, 31.6 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 68.4 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: December 2, 1997.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97-32315 Filed 12-9-97; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22924; File No. 812-10240]

Nationwide Life Insurance Company, et al.; Notice of Application

December 3, 1997.

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

ACTION: Notice of application for an order under (i) Sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") granting exemptive relief from Section 17(a) of the Act; and (ii) Section 12(d)(1)(J) of the Act granting exemptive relief from Sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to commence operations as a "fund of funds" whereby certain investment companies would invest in both investment companies that are part of the same "group of

investment companies" and investment companies that are not part of the same "group of investment companies." Other investments of the "fund of funds" could include government securities, short-term fixed income securities, and a guaranteed investment contract.

APPLICANTS: Nationwide Life Insurance Company, Nationwide Advisory Services, Inc., Nationwide Asset Allocation Trust, Nationwide Investing Foundation, Nationwide Investing Foundation II, and Nationwide Account Trust.

FILING DATES: The application was filed on July 8, 1996, and amended and restated on February 18, 1997, July 25, 1997, and November 19, 1997, and amended on December 3, 1997.

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 Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1997, 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 SEC's Secretary.

ADDRESSES: SEC, Secretary, 450 Fifth Street, N.W., Washington, D.C., 20549. Applicants, Nationwide Life Insurance Company, One Nationwide Plaza, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Senior Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942-8090).

Applicants' Representations

1. Nationwide Life Insurance Company ("Nationwide") is organized as a stock life insurance company under Ohio state law. Nationwide is admitted to do business in all fifty states, as well as the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

2. Nationwide Asset Allocation Trust ("NAAT") is a Massachusetts business trust, initially consisting of five series

(the "Asset Allocation Funds"), with the following investment objectives: Aggressive, Moderately Aggressive, Moderate, Moderately Conservative, and Conservative. Additional Asset Allocation Funds may be established in the future as (i) series of NAAT, (ii) series of any other Nationwide open-end investment company organized as a series trust, or (iii) as any other investment company of Nationwide that does not offer its securities in separate series. Each of the Asset Allocation Funds proposes to operate as a "fund of funds" that may invest in (i) shares of investment companies or their series, now existing or created in the future, that are part of the same "group of investment companies" (as defined in Section 12(d)(1)(G)(ii) as the Asset Allocation Funds ("Affiliated Underlying Funds") and (ii) shares of other investment companies that are not part of the same "group of investment companies" as the Asset Allocation Funds ("Unaffiliated Underlying Funds") (Affiliated and Unaffiliated Underlying Funds are collectively referred to as "Underlying Funds"). In addition to investing in the Underlying Funds, the Asset Allocation Funds also may invest in government securities, certain short-term fixed income securities, and a fixed rate investment contract issued by Nationwide (the "Fixed Contract").

3. Nationwide Investing Foundation ("NIF") is a Michigan business trust and Nationwide Investing Foundation II ("NIF II) and Nationwide Separate Account Trust ("NSAT") are Massachusetts business trusts registered under the Act as open-end management investment companies. Collectively, the portfolios of NIF, NIF II, and NSAT will initially act as the Affiliated Underlying Funds.

4. Nationwide Advisory Services, Inc. ("NAS") is a registered broker-dealer and investment adviser and is a member of the National Association of Securities Dealers, Inc. ("NASD"). NAS is a wholly owned subsidiary of Nationwide and serves as principal underwriter of variable annuity contracts and variable life insurance policies issued by Nationwide and Nationwide's wholly subsidiary Nationwide Life and Annuity Insurance Company. Additionally, NAS currently serves as the investment adviser to all of the portfolios in NIF, NIF II, and NSAT. NAS also will serve as the investment adviser for NAAT once NAAT begins operations.

5. Nationwide will issue variable annuity contracts ("Contracts") designed to be sold to retirement plans of governmental entities. The Contracts will offer participants in these

retirement plans an opportunity for asset allocation through the selection of five Asset Allocation Fund options that have investment objectives ranging from conservative to aggressive.

6. The Asset Allocation Funds will invest primarily in Underlying Funds in accordance with a target allocation of investment categories (aggressive growth, growth, growth and income, balanced, guaranteed interest, bond/money market) reflecting the overall objective of each Asset Allocation Fund and matching the participant's risk tolerance and time horizon. The Asset Allocation Funds will invest in Underlying Funds, subject to certain conditions. Some of the Unaffiliated Underlying Funds may be organized as "feeder" funds in a "master-feeder" structure. The allocation for each Asset Allocation Fund will be ensured through periodic rebalancing.

7. The Asset Allocation Funds also may invest in the Fixed Contract. Each Asset Allocation Fund will be permitted to remove its assets from the Fixed Contract at any time without imposition of a sales charge or market value adjustment.

8. The Underlying Funds will pay advisory fees to their advisers. In addition, the Underlying Funds will pay fees to their service providers for all other services relating to their operations, including custody, administration, and fund accounting. Therefore, shareholders of the Asset Allocation Funds indirectly will pay their proportionate share of any Underlying Fund fees and expenses.

9. The Asset Allocation Funds also will pay a unified fee at the annual rate of .50% of daily net assets to NAS for both investment advisory services and for administrative expenses (the "Unified Fee"). The portion of the Unified Fee that covers the investment advisory services provided by NAS to the Asset Allocation Funds is for services in addition to, and not duplicative of, those provided by the investment advisers for the Underlying Funds. In Addition, the Asset Allocation Funds will pay for administrative, custody, legal, accounting, and other expenses out of the Unified Fee. The services at the Asset Allocation Fund level are different from the services provided to the Underlying Funds because each Asset Allocation Fund is a separate entity with its own administrative, compliance, recordkeeping, and custody needs.

10. The Asset Allocation Funds will pay no front-end sales loads or contingent deferred sales charges in connection with the purchase or

redemption of Underlying Fund shares. In addition, any sales charges or service fees, as defined in Section 2830 of the NASD Conduct Rules, will be limited in the manner described in Condition 3 below. Nationwide, however, will be permitted to include with the Contract a contingent deferred sales load chargeable upon termination of the Contract, to the extent permitted by the Act, the regulations of the NASD, or any other applicable law or regulation.

11. The Contracts will impose an actuarial risk fee related to the Contract's mortality and expense risks and administrative expenses ("Actuarial Risk Fee"). The Actuarial Risk Fee will be paid to Nationwide, and will be equivalent to a maximum of .95% of average account value on an annual basis (.10% for mortality risk, 40% for expense risk, and .45% for administration). The administrative portion of the Actuarial Risk Fee is designed to reimburse Nationwide for maintaining Contract and participant level records and reporting including tax reporting, customer services (including executing and tracking transfers and exchanges for the Contracts) and compliance with applicable laws and regulations. Nationwide, or one of its affiliates, may receive an administrative fee from any of the Underlying Funds, or an adviser or administrator of an Underlying Fund, to compensate Nationwide for maintaining participant level records and providing customer servicing to participants. The receipt by Nationwide of such a fee will result in a corresponding reduction in the Actuarial Risk Fee. In addition, the Actuarial Risk Fee is subject to a sliding scale reduction based on the asset size of a Contract.

Applicants' Legal Analysis

Sections 12(d)(1) (A) and (B) of the Act

1. Section 12(d)(1)(A) of the Act provides that it shall be unlawful for any registered investment company (the "acquiring company") to purchase or otherwise acquire any security issued by any other investment company (the "acquired company") if the acquiring company and any other company or companies controlled by it immediately after such purchase or acquisition own in the aggregate (i) more than 3% of the total outstanding voting stock of the acquired company, (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the acquiring company, or (iii) securities issued by the acquired company and all other investment companies having an

aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(B) of the Act provides that it shall be unlawful for any registered open-end investment company (the "acquired company") knowingly to sell or otherwise dispose of any security issued by the acquired company to any other investment company (the "acquiring company") or any company or companies controlled by the acquiring company if immediately after such sale or disposition (i) more than 3% of the total outstanding voting stock of the acquired company is owned by the acquiring company and any company or companies controlled by it, or (ii) more than 10% of the total outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies controlled by them.

3. Section 12(d)(1)(G)(i) of the Act states that Section 12(d)(1) does not apply to securities of a registered open-end investment company (the "acquired company") purchased or otherwise acquired by a registered open-end investment company (the "acquiring company") if (i) the acquired company and the acquiring company are part of the same group of investment companies, (ii) the securities of the acquired company, securities of other registered open-end investment companies that are part of the same group of investment companies, government securities, and short-term paper are the only investments held by the acquiring company, (iii) with respect to securities of the acquiring company, any sales loads and other distribution-related fees charged, when aggregated with any sales load and distribution-related fees paid by the acquiring company with respect to securities of the acquired fund, are not excessive under rules adopted pursuant to Section 22(b) or Section 22(c) by a securities association registered under Section 15A of the Securities Exchange Act of 1934, or the Commission, and (iv) the acquired company has a policy that prohibits it from acquiring any securities of registered investment companies in reliance on Section 12(d)(1) (G) or (F).

4. Applicants state that the Asset Allocation Funds may not rely on the exemption provided by Section 12(d)(1)(G) because they propose to invest in shares of Unaffiliated Underlying Funds and the Fixed Contract as well as securities of funds that are part of the same "group of investment companies" as the Asset

Allocation Funds, government securities, and short-term paper.

5. Section 12(d)(1)(F) of the Act provides that the provisions of Section 12(d)(1) shall not apply to securities purchased or otherwise acquired by a registered investment company if immediately after such purchase or acquisition, not more than 3% of the total outstanding stock of such issuer is owned by such registered investment company and all affiliated persons of such registered investment company; and such registered investment company has not offered or sold and is not proposing to offer or sell any security issued by it through a principal underwriter or otherwise at a public offering price that includes a sales load of more than 1½%. Further, no issuer of any security purchased under Section 12(d)(1)(F) shall be obligated to redeem such security in an amount exceeding 1% of such issuer's total outstanding securities during any period less than 30 days. Applicants state that investments by the Asset Allocation Funds in Unaffiliated Underlying Funds will be made in accordance with Section 12(d)(1)(F).

6. Section 12(d)(1)(J) of the Act provides that the Commission is authorized to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of Section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request an order under Section 12(d)(1)(J) exempting them from the limitations of Sections 12(d)(1) (A) and (B).

7. Applicants assert that the purpose of Section 12(d) of the Act was to prevent unregulated pyramiding of investment companies and the negative effects that are perceived to arise from such pyramiding. Such abuses include duplicative costs, the exercise of undue influence or control over the underlying funds, the threat of large-scale redemptions, and the complexity of such arrangements.

Duplication of Costs

8. Applicants argue that the proposed arrangement will include safeguards designed to address layering of fees. They assert that, before approving any advisory contract under Section 15 of the Act, the trustees of the Asset Allocation Funds, including a majority of the trustees who are not "interested persons," as defined in Section 2(a)(19) of the Act, would find that any advisory fees or charges under the contract are based on services that are in addition to, rather than merely duplicative of,

services provided under the advisory contract for any Underlying Fund.

9. Applicants also submit that the structure of the Asset Allocation Funds will not implicate sales charge layering concerns because the Asset Allocation Funds will not purchase Underlying Funds that impose a sales load upon the Asset Allocation Funds. Furthermore, Applicants argue that as a condition for the requested relief, they will limit any sales charges or service fees as defined in Section 2830 of the NASD Conduct Rules by agreeing that such fees will only be charged at either the Asset Allocation Fund level or at the Underlying Fund level, but not both. Applicants believe that these limits place the Contracts and the Asset Allocation Funds in a position that is similar to that for other group variable annuity contracts and their underlying mutual fund options.

10. Administrative expenses will be charged at the Underlying Fund level and, as part of the Unified Fee, at the Asset Allocation Fund level. Applicants assert that similar, but distinct, administrative services need to be provided at both the Asset Allocation Fund level and the Underlying Fund level in order to provide the benefits of asset allocation. Applicants also state that they have limited the total expenses of the Asset Allocation Funds by adopting a Unified Fee.

11. Applicants state that the administration portion of the Actuarial Risk Fee is designed to reimburse Nationwide for maintaining Contract and participant level records and reporting, providing customer services, and compliance functions. Applicants argue that these services directly affect contract owners and their participants and, as such, are distinct from any administrative charges at the Asset Allocation Fund and Underlying Fund levels. In addition, Applicants note that if Nationwide receives any administrative or service fees from the Underlying Funds, or from the adviser or administrator of the Underlying Funds, to compensate Nationwide for providing these services, there will be a corresponding reduction in the Actuarial Risk Fee.

12. Furthermore, Applicants represent that fees and charges at all levels, in the aggregate, will be reasonable in relation to the services rendered, expenses expected to be incurred, and risks assumed by Nationwide.

Control

13. Applicants further assert that the Unaffiliated Underlying Funds cannot be controlled in any meaningful way by the Asset Allocation Funds since

purchases will be made in accordance with the percentage limitations in Section 12(d)(1)(F).

14. Moreover, when purchasing Affiliated Underlying Funds the concern over this potential abuse is minimized, Applicants submit, because there is little risk that NAS will exercise inappropriate control over the Affiliated Underlying Funds, which are part of the "same group of investment companies." NAS, in serving as the investment adviser for both the Asset Allocation Funds and the Affiliated Underlying Funds, is under a fiduciary obligation to act in the best interests of the shareholders of both sets of funds. Therefore, it is argued, NAS will not operate the Asset Allocation Funds so as to penalize the Affiliated Underlying Funds.

Large Scale Redemptions

15. Applicants assert that there is little risk that the Asset Allocation Funds' adviser will exercise inappropriate control over the Affiliated Underlying Funds, which are part of the same "group of investment companies." In this connection, Applicants note that Section 12(d)(1)(G) of the Act does not impose any express limitations on statutory funds of funds with respect to redemption of shares of the underlying funds. With respect to investments by the Asset Allocation Funds in shares of Unaffiliated Underlying Funds, Applicants state that the Asset Allocation Funds, together with their affiliates, will comply with the restrictions of Section 12(d)(1)(F) on redeeming more than 1% of the outstanding securities of any of the Unaffiliated Underlying Funds during any period of less than 30 days.

Complexity

16. Finally, Applicants submit that, with respect to whether the proposed structure is complex, Congress, in Section 12(d)(1)(G)(i)(IV), required that the funds underlying a statutory fund of funds have a policy prohibiting such underlying funds from acquiring any securities in reliance on Sections 12(d)(1)(G) or (F). Applicants state that the Affiliated Underlying Funds have adopted such policies. In addition, Applicants state that no Underlying Fund will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act except to the extent that such Underlying Fund (a) receives securities of another investment company or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed

to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

Section 17(a) of the Act

17. Section 17(a) of the Act prohibits any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in Section 12(d)(3) (A) and (B)), or any affiliated person of such a person, promoter, or principal underwriter, acting as principal, from knowingly selling any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely: (a) securities of which the buyer is the issuer; (b) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities; or (c) securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof.

18. Section 6(c) of the Act provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes 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.

19. Section 17(b) of the Act provides that the Commission may, by order upon application, exempt a proposed transaction from one or more provisions of 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 registered investment company concerned, as recited in its registration statement and reports filed with the Commission; and the proposed transaction is consistent with the general purposes of the Act.

20. Applicants seek relief from the prohibitions of Section 17(a) of the Act pursuant to Sections 6(c) and 17(b) of the Act to allow the Asset Allocation Funds to purchase the Affiliated Underlying Funds and the Nationwide Fixed Contract.

21. Applicants assert that since the Asset Allocation Funds and the Affiliated Underlying Funds are each advised by NAS, the Asset Allocation Funds and the Affiliated Underlying Funds could be deemed to be affiliated persons of one another by virtue of being under common control of their adviser. Moreover, Applicants state that the Asset Allocation Funds and the Affiliated Underlying Funds may also be deemed to be affiliated persons of one another to the extent that the Asset Allocation Funds own 5% or more of the shares of an Affiliated Underlying Fund. Therefore, purchases by Asset Allocation Funds and the sale by the Affiliated Underlying Funds of their shares to the Asset Allocation Funds could be deemed to be principal transactions between affiliated persons under Section 17(a).

22. Nationwide states that it will issue from its general account a Fixed Contract to NAAT on behalf of each of NAAT's funds. NAS is a wholly owned subsidiary of Nationwide and serves as principal underwriter of the Contracts funded by the Separate Account. Moreover, NAS serves as investment adviser to NAAT, which will purchase the Fixed Contract on behalf of each of NAAT's funds. Applicants submit that the Asset Allocation Funds may be deemed to be affiliated persons of Nationwide to the extent they are advised by NAS, Nationwide's wholly owned subsidiary. Applicants state that any purchases of the Fixed Contract by the Asset Allocation Funds could be deemed to be principal transactions between affiliated persons.

23. Applicants state that they believe that, with respect to the purchase of the Affiliated Underlying Funds and the Fixed Contract, the requested relief is appropriate because the proposed arrangements meet the standards of Section 17(b) of the Act. First, Applicants argue that the terms of the proposed transactions are fair and reasonable and do not involve overreaching. The consideration paid for the sale and redemption of shares of the Affiliated Underlying Funds will be based on the net asset values of the Affiliated Underlying Funds with no sales load. Any investment advisory fee paid to NAS by the Asset Allocation Funds will not be duplicative of the investment advisory fees paid by the Affiliated Underlying Funds. In addition, the Asset Allocation Funds will pay no sales load when purchasing the Fixed Contract and the guaranteed rate on the Fixed Contract will be at least as favorable as the guaranteed rate paid on other similar fixed contracts issued by Nationwide. Also, each Asset

Allocation Fund will be permitted to remove Fund assets from the fixed Contract at any time, without the imposition of a sales charge or market value adjustment. Second, Applicants submit that the proposed transactions will be consistent with the policies of each Asset Allocation Fund. Finally, Applicants argue that the proposed arrangements do not involve overreaching or self-dealing and are consistent with the general purposes of the Act.

Conditions For Relief

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

1. Each Asset Allocation Fund and each Affiliated Underlying Fund will be part of the same "group of investment companies" as that term is defined in Section 12(d)(1)(G)(ii) of the Act.

2(a). In the case of an Underlying Fund that is not a feeder fund in a "masterfeeder" structure, no Underlying Fund will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

2(b). No Underlying Fund that is a feeder fund in a "master-feeder" structure will acquire securities of any other investment company except in conformity with Section 12(d)(1)(E) of the Act. No master fund in such a structure shall acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent that such master fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such master fund to (i) acquire securities of one or more affiliated investment companies for

short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

3. No sales load will be charged at the Asset Allocation Fund level or at the Underlying Fund level, including any Unaffiliated Underlying Fund that is a feeder in a "master-feeder" structure or any master fund in such a structure. Sales charges or service fees as defined in Section 2830 of the Conduct Rules of the NASD, if any, will only be charged at either the Asset Allocation Fund level or at the Underlying Fund level, but not both. In a situation where an Asset Allocation Fund invests in a feeder fund, the Applicants agree to limit sales charges or service fees to only one level, at the feeder fund, the master fund, or the Asset Allocation Fund level.

4. Before approving any advisory contract pursuant to Section 15 of the Act, the Board of Trustees of an Asset Allocation Fund, including a majority of the Trustees who are not "interested persons" as defined in Section 2(a)(19) of the Act, will find that the advisor fees charged under such contract, if any, are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract of any Underlying Fund in which the Asset Allocation Funds may invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of such Asset Allocation Fund.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-32311 Filed 12-9-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39392; File No. SR-Amex-97-38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Exchange's Warrant Listing Guidelines

December 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on October 22, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities Exchange Commission the proposed rule change as described in Items I, II and III below, which Items

have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The American Stock Exchange, Inc. proposes to amend its Company Guide to revise its warrant listing guidelines. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

Section 105 of the Amex Company Guide provides that the Exchange will not list warrants unless the underlying common stock is listed on either the Amex or the New York Stock Exchange and further provides that the Exchange will evaluate the warrant issuer's listing eligibility using the same financial and distribution guidelines as are applied to the listing of common stock. The Exchange believes that those criteria are unnecessarily high when applied to the listing of warrants. Warrants do not represent a new type of direct claim upon a company's assets or otherwise expose a company to financial risk. Accordingly, the original listing financial guidelines for common stock are not relevant to the listing of warrants and the Exchange proposes instead to list a warrant issue so long as the Company is in good standing on either the Amex or the NYSE, *i.e.*, above the continued listing guidelines (a similar change was previously made to the Exchange's guidelines with respect to the listing of debt securities).

Similarly, the original listing distribution guidelines for common stocks (either 1,000,000 shares/warrant

¹ 15 U.S.C. 78s(b)(1).