N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32820 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1686/803–116]

ProFutures Capital Management, Inc.; Notice of Application

December 11, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

Applicant: ProFutures Capital Management, Inc. (''PMC'').

Relevant Advisers Act Sections: Exemption requested under section 203A(c) from section 203A(a).

Summary of Application: Applicant requests an order to permit it to register with the SEC as an investment adviser.

Filing Dates: The application was filed on July 8, 1997, and amended on October 3, 1997 and December 2, 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 applicant with a copy of the requests, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 7, 1998, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, ProFutures Capital Management, Inc., Suite 200, 1310 Highway 620 South, Austin, Texas 78374.

FOR FURTHER INFORMATION CONTACT: Robert J. Leonard, Attorney, at (202) 942–0646, or Jennifer S. Choi, Special Counsel, at (202) 942–0716 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Texas corporation with its principal place of business in Austin, Texas. Applicant researches and evaluates the performance and trading programs of other investment advisers who manage client accounts on a discretionary basis and refers clients to those advisers selected by applicant.

2. Applicant assists prospective clients in identifying their investment objectives and risk tolerance, and provides information on investment advisers whose trading programs seek to meet those objectives. Applicant provides clients with account opening documents and reviews all account documents for accuracy before forwarding them to the adviser that the client has selected. Applicant also reviews all accounts for client suitability. Additionally, applicant assists clients in allocating assets among the selected investment advisers and suggests adjustments to the allocations. Applicant does not have discretionary authority on behalf of clients to select the advisers or allocate client funds to selected advisers.

3. Applicant is compensated for referring clients to selected advisers by sharing in up to one half of the management fee charged by such adviser. Applicant has over 700 clients located nationwide. These clients include individuals, financial institutions, pension and profit sharing plans, trusts, estates and other corporate entities

4. Applicant is legally obligated to be registered in at least 30 states as an investment adviser, taking into account the national de minimis standard in section 222(d) of the Advisers Act and all applicable exemptions and exclusions under the securities laws and regulations of such states. Applicant is currently registered in 46 states. Applicant was registered as an investment adviser with the SEC until July, 1997.

Applicant's Legal Analysis

1. On October 11, 1996, the National Securities Markets Improvement Act of 1996 was enacted. Title III of the Act, the Investment Advisers Supervision Coordination Act (''Coordination Act''), added new section 203A to the Advisers Act. Under section 203A(a)(1),[1] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the SEC unless the investment adviser (i) has assets under management of not less than $25 million or (ii) is an adviser to an investment company registered under the Investment Company Act of 1940 (''Investment Company Act''). Section 203A(a)(2) defines the phrase ''assets under management'' as the ''securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.'' [2]

2. applicant states that it does not qualify for registration as an investment adviser with the SEC. Applicant states that it has no assets under management, does not act as an investment adviser to an investment company registered under the Investment Company Act, and does not qualify for exemption from the prohibition on SEC registration as provided in rule 203A–2 under the Advisers Act. Applicant also maintains its principal place of business in Texas, which regulates applicant as an investment adviser.

3. Section 203A(c) of the Advisers Act authorizes the SEC to permit an investment adviser to register with the SEC if prohibiting registration would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [section 203A].'' [3]

4. Applicant states that Congress noted that ''the definition of 'assets under management' . . . may, in some cases, exclude firms with a national or multistate practice from being able to register with the SEC.'' [4] Applicant asserts that to remedy any unfairness, burdens or inconsistencies caused by the assets under management requirement, Congress intended the SEC to use its exemptive authority to ''permit, where appropriate, the registration of such firms with the [SEC].'' [5]

5. Applicant believes that Congress in adopting section 203A intended the SEC

[1] 15 U.S.C. 80b–3a(a)(1).

[2] 15 U.S.C. 80b–3a(a)(2).

[3] 15 U.S.C. 80b–3a(c).

[4] S. Rep. No. 293, 104th Cong., 2d Sess. 4 (1996).

[5] *Id.* at 5.

to grant these exemptions to advisers having a ''national or multistate practice'' and that ''[l]arger advisers, with national businesses, should be registered with the [SEC] and be subject to national rules.'' [6] Applicant notes that Congress chose an assets under management requirement as a rough proxy that would divide responsibilities between the SEC and the states; investment advisers managing $25 million or more of assets under management are more likely to be national investment advisers.

6. Applicant asserts that prohibiting it from registering with the SEC would be a burden on interstate commerce in that applicant would be subject to the regulations and oversight of at least 30 jurisdictions, which would impede applicant's ability to operate its national business on a uniform basis. Applicant states that it is legally obligated to be registered in at least 30 jurisdictions as an investment adviser, taking into account the national de minimis standard in section 222(d) of the Advisers Act and all applicable exemptions and exclusions under the securities laws and regulations of such states. Applicant states that the extent of its investment advisory services means that it does not qualify for the national de minimis exemption, as set forth in section 222(d) of the Advisers Act, in at least 30 states because it has provided investment advisory services to more than five clients during the preceding twelve months who are residents of those states.

7. Section 222(d) of the Advisers Act makes state investment advisers statutes inapplicable to investment advisers that do not have a place of business located within that state and, during the preceding twelve month period, have fewer than six clients who are residents of that state.

8. Applicant also asserts that to prohibit it from registered with the SEC would be unfair because applicant's investment advisory business is substantially similar to that of other national investment advisers who are eligible for SEC registration and oversight. Moreover, applicant believes that it would be inconsistent with the purposes of section 203A if it is prohibited from being registered with the SEC.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32919 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

[6] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39418; File No. SR–CBOE–97–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Margin and Net Capital Requirements for Joint Back Office Arrangements

December 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 27, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Exchange seeks to amend Exchange Rule 12.3 and adopt new Exchange Rule 13.4 to establish margin and net capital requirements for Joint Back Office (''JBO'') participants and clearing firms.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, 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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to revise Exchange Rule 12.3 and adopt new Exchange Rule 13.4 to establish margin and net capital requirements for JBO participants and clearing firms. JBO arrangements permit a participating broker-dealer to be deemed self-clearing for margin purposes and entitle the participating broker-dealer to good faith credit.[2]

In recent amendments to Regulation T,[3] the Board of Governors of the Federal Reserve System (''FRB'') placed its reliance on the authority of self-regulatory organizations (''SROs'') to ensure the reasonableness of JBO arrangements.[4] When the provision permitting JBO arrangements was first adopted, the FRB assumed there would be a reasonable relationship between the good faith credit extended to a JBO participant and its ownership interest in the clearing firm. Consequently, the FRB did not establish any explicit requirement for the amount of ownership each participant should have in the JBO. Because Regulation T does not provide an ownership standard,[5] however, good faith credit has been extended to ''owners'' holding merely a nominal interest in a clearing firm.

In conjunction with other SROs and representatives from the securities industry, the Exchange has established standards for JBO participants and clearing firms. These standards will permit the extension of good faith credit to clearing firm ''owners'' only when the owners maintain meaningful assets on deposit with the JBO clearing firm, and the clearing firm maintains sufficient net capital and risk control procedures to carry such accounts. The Exchange's proposed rule change would establish the following requirements:

Net Capital Requirements. As proposed, Exchange Rule 13.4 will require each JBO participant [6] to be a registered broker-dealer subject to the net capital requirements prescribed by Commission Rule 15c3–1 (''Rule 15c3–1'').[7] JBO participants may not claim the

[1] 15 U.S.C. 78s(b)(1).

[2] Under the proposed rule change, JBO participants would not be considered self-clearing for any purpose other than the extension of credit under Exchange Rule 12.3, as revised, or under the comparable rules of another self-regulatory organization.

[3] 12 CFR 220 *et seq.* Regulation T is entitled ''Credit by Brokers and Dealers.'' The Board of Governors of the Federal Reserve System issued Regulation T pursuant to the Act.

[4] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

[5] Section 220.11(a)(2) of Regulation T only requires that a JBO clearing firm be ''a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers].'' 12 CFR 220.11(a)(2).

[6] The proposed rule change allows members and member organizations to establish JBO arrangements with JBO clearing members.

[7] 17 CFR 240.15c3–1.