

under the Act will use the average maturity of the instrument(s) in the Joint Account in which such Fund has an interest (determined on a dollar weighted basis) for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in the Joint Account for that day.

5. In order to ensure that there will be no opportunity for one participant to use any part of a balance of the Joint Account credited to another participant, no participant will be allowed to create a negative balance in the Joint Account for any reason, although each Fund will be permitted to draw down its entire balance at any time. Each Fund's decision to invest in the Joint Account will be solely at its option, and no Fund will be obligated either to invest in the Joint Account or to maintain any minimum balance in the Joint Account. In addition, each Fund will retain the sole rights of ownership to any of its assets invested in the Joint Account, including interest payable on such assets in the Joint Account.

6. Not every participant in the Joint Account will necessarily have its cash invested in every short-term investment entered into through the Joint Account. However, to the extent that a participant's cash is applied to a particular short-term investment made through the Joint Account, the participant will participate in and own a proportionate share of such short-term investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with monies contributed by the participant.

7. The Adviser will administer the investment of cash balances in and operations of the Joint Account as part of its general duties under its existing or any future investment advisory contracts with the Funds and the Adviser will not collect any additional or separate fees from any Fund for advising the Joint Account.

8. The administration of the Joint Account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g-1 thereunder.

9. The Board of Trustees of each Trust that has Funds and/or Future Funds participating in the Joint Account will adopt procedures pursuant to which the Joint Account will operate, which will be reasonably designed to provide that the requirements of this application will be met. The Board of Trustees of each Trust that has Funds and/or Future Funds participating in the Joint Account will make and approve such changes as each deems necessary to ensure that such procedures are followed. In

addition, each of such Board of Trustees will determine, no less frequently than annually, that the Joint Account has been operated in accordance with the proposed procedures and will permit continued participation by those Funds in the Joint Account only if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Joint Account.

10. Any short-term investments made through the Joint Account will satisfy the investment criteria of all participants in that investment.

11. The Adviser and State Street will maintain records documenting, for any given day, each participant's aggregate investment in the Joint Account and its pro rata share of each investment made through the Joint Account. The records will be maintained in conformity with section 31 of the Act and the rules and regulations thereunder.

12. Short-term investments held in the Joint Account generally will not be sold prior to maturity unless: (a) The Adviser believes the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all participants in the investment because of downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. The Adviser may, however, sell any short-term investment (or any fractional portion thereof) on behalf of some or all participants prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling participants and the transactions will not adversely affect other participants participating in the Joint Account. In no case would an early termination by less than all participants be permitted if it would reduce the principal amount or yield received by other participants in the Joint Account or otherwise adversely affect the other participants. Each participant in the Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

13. Short-term investments held through the Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a-7 under the Act, would be considered illiquid and would be subject to the restriction that a Fund may not invest more than 15% or, in the case of a money market fund, more than 10% (or, in either such case, such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, if the Adviser cannot sell the instruments, or the Fund's fractional interest in such instrument, pursuant to the preceding condition.

14. Future Funds will be permitted to participate in the Joint Account arrangement only on the same terms and conditions as the Funds have set forth herein.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-13959 Filed 5-26-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC-23194; 812-11114]

UBS Investor Portfolios Trust, et al.; Notice of Application

May 20, 1998.

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

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the implementation, without prior shareholder approval, of new investment advisory and sub-advisory agreements ("New Advisory Agreements") in connection with the merger of Union Bank of Switzerland ("UBS") and Swiss Bank Corporation ("SBC"). The order would cover a period of up to 150 days following the later of: (i) date on which the transactions contemplated by the merger agreement are consummated (the "Closing Date"), or (ii) the date upon which the requested order is issued (but in no event later than December 31, 1998) (the "Interim Period"). The order also would permit UBS-New York Branch ("UBS-NY Branch"), UBS Asset Management (New York) Inc. ("UBSAM-NY"), and UBS International Investment London Limited (UBSII) (collectively, the "Advisers"), following shareholder approval, to receive all fees earned under the New Advisory Agreements during the Interim Period.

Applicants: UBS Investor Portfolios Trust ("UBS Investor Portfolios"), UBS, UBSAM-NY, and UBSIL.

Filing Dates: The application was filed on April 20, 1998. 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 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 June 15, 1998, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Naomi Friedland-Wechsler, Esq., Union Bank of Switzerland, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT:

J. Amanda Machen, Senior Counsel, at (202) 942-7120, or Mary Kay Frech, 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 may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202-942-8090).

Applicants' Representations

1. UBS, directly and through its subsidiaries, offers a wide range of financial services worldwide, including asset management and investment advisory services. UBS conducts its asset management business in the United States through its branch located in New York, UBS-NY Branch, and through its wholly-owned indirect subsidiaries, UBSAM-NY and UBSIL. UBSAM-NY and UBSII are both registered under the Investment Advisers Act of 1940 ("Advisers Act"). UBS-NY Branch is not so registered, in reliance on section 202(a)(11)(A) of the Advisers Act. UBS-NY Branch serves as investment adviser to UBS Investor Portfolios, and open-end management investment company registered under the Act, which organized in a master-feeder structure with six active portfolios and one in registration (each portfolio, a "Fund," and collectively, the "Funds").¹ UBSAM-NY and UBSII

serve as investment sub-advisers to certain of the Funds.²

2. UBS and SBC have agreed to merge into a newly created entity ("New UBS") under the terms of a merger agreement dated December 5/6, 1997 ("Merger Agreement"). Upon consummation of the transactions contemplated by the Merger Agreement ("Merger"), New UBS will be owned approximately 60% by former UBS stockholders and 40% by former SBC stockholders. Upon completion of the Merger, UBS and SBC will both cease to exist and all of their assets, including the stock of the Adviser subsidiaries, will become assets of New UBS.

3. Applicants state that the Merger may result in an assignment and termination of the existing advisory and sub-advisory agreements of UBS-NY Branch and UBSAM-NY. Because the existing advisory agreement of UBSII with UBS Investor Portfolios terminates by its terms when the related UBS-NY Branch advisory agreement terminates, applicants state that Merger also may result in termination of this agreement (together with the existing advisory agreements of UBS-NY Branch and UBSAM-NY, the "Existing Advisory Agreements"). Applicants request an exemption to permit the implementation, without prior shareholder approval, of the New Advisory Agreements. The requested exemption will cover the Interim Period of not more than 150 days, beginning on the later of (i) the Closing Date or (ii) the date on which the order requested by this application is issued and continuing with respect to each Fund through the date on which each New Advisory Agreement is approved or disapproved by the Fund's shareholders, but in no event after December 31, 1998. Applicants state that the terms and conditions of the corresponding Existing and New Advisory Agreements will be the same in all material respects, except for the dates of execution and termination. The Closing Date may occur as early as June 1, 1998.³

² UBSAM-NY serves as sub-adviser to UBS High Yield Bond Portfolio, UBS Large Cap Growth Portfolio, and UBS Small Cap Portfolio; UBSII serves as sub-adviser to UBS International Equity Portfolio.

³ Applicants state that if the Closing Date precedes the issuance of the requested order, the Advisers will serve as investment advisers after the Closing Date and prior to the issuance of the order in a manner consistent with their fiduciary duty to provide investment advisory services to the Funds even though approval of the New Advisory Agreements has not yet been secured from the Funds' respective shareholders. Applicants also state that in such event the Advisers will be entitled to receive from the Funds, from the Closing Date until receipt of the requested order, no more than

4. The board of directors of each Fund (the "Boards") met on May 12, 1998, in accordance with section 15(c) of the Act, to consider and evaluate the New Advisory Agreements and determined that the New Advisory Agreements were in the best interests of the Funds and their respective shareholders. The Boards also voted to recommend that the Funds' respective shareholders approve the New Advisory Agreements.

5. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution ("Escrow Agent"). The fees earned by the Advisers under the New Advisory Agreements during the Interim Period will be paid into an account maintained by the Escrow Agent. The Escrow Agent will release the amounts held in the escrow account (including any interest earned): (a) to the Advisers only upon receipt of certification that the New Advisory Agreements have been approved by the shareholders of the relevant Fund; or (b) to the relevant Fund in the absence of approval by its shareholders. Before any certification is released, the relevant Board will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the registered investment company. Section 15(a) of the Act further requires that the written contract provide for automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants believe that the Merger will not result in a transfer of a controlling block of UBS under section 2(a)(4) of the Act. Applicants state, however, that under the terms of the Merger and the current business plan of New UBS, certain changes in portfolio management personnel, structure and process are expected at UBS-NY Branch and UBSAM-NY. Applicants assert that these changes could result in a change of the actual control or management of UBS-NY Branch and UBSAM-NY. Applicants state that there may therefore be an assignment, and thus

the actual out-of-pocket costs to the Advisers for providing investment advisory services to the Funds.

¹ The six portfolios include: UBS Bond Portfolio, UBS High Yield Bond Portfolio, UBS Value Equity Portfolio, UBS Large Cap Growth Portfolio, UBS Small Cap Portfolio, and UBS International Equity Portfolio.

automatic termination, of their Existing Advisory Agreements. In addition, applicants state that the Existing Advisory Agreement of UBSII with UBS Investor Portfolios will terminate in accordance with its terms.

3. Rule 15a-4 under the Act provides, in pertinent part, that if an investment advisory contract with an investment company is terminated by an assignment in which the adviser does not directly receive a benefit, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) the new contract is approved by the company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that they cannot rely on rule 15a-4 because UBS-NY Branch, UBSAM-NY or UBSII, or UBS as their controlling person, may be deemed to receive a benefit in connection with consummation of the Merger.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction 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. Applicants assert that the requested relief meets this standard.

5. Applicants submit that the terms and timing of the Merger were determined by UBS and SBC in response to a number of factors beyond the scope of the Act and substantially unrelated to the Funds. Applicants state that there is insufficient time to obtain shareholder approval of the New Advisory Agreements before the Closing Date. Applicants assert that the requested relief would permit continuity of investment management of the Funds, without interruption, during the period following consummation of the Merger.

6. UBS represents that the Funds will receive the same scope and quality of investment advisory services during the Interim Period. The relevant Adviser will render investment advisory services to the Funds under the New Advisory Agreements, which will be the same as the Existing Advisory Agreements,

except for the dates of execution and termination. Applicants assert that during the Interim Period, investment advisory services will be provided by investment management personnel with the same or comparable skills, experience and responsibilities, in the same manner and at the same fee levels. Applicants state that, in the event of any material change in personnel, the relevant Adviser will apprise and consult the Boards to assure that the Boards, including a majority of the non-interested directors, are satisfied that the services provided by the Adviser will not be diminished in scope or quality.

7. Applicants note that the fees payable to the Advisers during the Interim Period under the New Advisory Agreements will be at the same rate as the fees currently payable by each Fund under the Existing Advisory Agreements and have been approved by the appropriate Fund's Board and respective shareholders. Applicants also state that the fees will not be released to the Adviser by the Escrow Agent without an appropriate certification that the New Advisory Agreements have been approved by the Fund's respective shareholders.

Applicants' Conditions

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

1. The New Advisory Agreements will contain the same terms and conditions as the Existing Advisory Agreements, except for the dates of execution and termination.

2. The portion of the investment advisory fees earned by an Adviser during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid (a) to the Adviser only upon approval of each New Advisory Agreement by the applicable Fund's shareholders, or (b) in the absence of shareholder approval prior to the expiration of the Interim Period, to the Fund.

3. Each Fund will promptly schedule a meeting of shareholders to vote on approval of the New Advisory Agreements to be held within 150 days following the commencement of the Interim Period (but in no event after December 31, 1998).

4. UBS, UBSAM-NY and UBSII will pay the costs of preparing and filing the application, and the costs relating to the solicitation of approval of Fund shareholders of the New Advisory Agreements necessitated by the Merger.

5. UBS will take all appropriate actions to ensure that the scope and quality of investment advisory and other services provided to the Funds by the Advisers during the Interim Period will be at least equivalent, in the judgment of the Boards, including a majority of the non-interested Board members, to the scope and quality of services currently provided by the Adviser. In the event of any material change in the personnel providing services pursuant to the New Advisory Agreements, the Adviser will apprise and consult with the Boards to ensure that the Boards, including a majority of the non-interested Board members, are satisfied that the services provided will not be diminished in scope or quality.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-13957 Filed 5-26-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40005; File No. SR-NASD-98-18]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Extension of Comment Period for Proposal Relating to Qualified Immunity in Arbitration Proceedings for Statements Made on Forms U-4 and U-5

May 19, 1998.

On April 21, 1998, the NASD Regulations, Inc. ("NASD Regulation") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934.¹ NASD Regulation proposes to provide members of the NASD with qualified immunity in arbitration proceedings for statements made in good faith in certain disclosures filed with the NASD on Forms U-4 and U-5, the uniform registration and termination notices for registered persons.

Notice of the proposed rule change was provided by the issuance of Securities Exchange Act Release No. 39892 (April 21, 1998) and by publication in the **Federal Register** on April 28, 1998 (63 FR 23321). The Commission has received requests for an extension of time for public comment

¹ 15 U.S.C. 78s(b)(1).