

natural gas distribution system in seven counties in northwestern North Carolina. By order dated March 9, 1998, the NCUC approved various proposals by Frontier Utilities and Frontier Energy related to the financing for the construction of this gas system, including participation by Frontier Pacific as an equity investor in Frontier Energy.<sup>3</sup> In addition, the NCUC authorized Frontier Utilities to transfer the Certificates to Frontier Energy.

Frontier Energy commenced construction in four of the counties during the second quarter of 1998. When complete, the system in these counties will consist of approximately 140 miles of transmission mains, including a 40 mile lateral tap off the interstate pipeline facilities of Transcontinental Gas Pipe Line Corp. and at least 320 miles of distribution mains. Construction in the other counties will commence at a later date. Applicants state that attributable income from Frontier Energy will contribute less than 1% of Sempra's consolidated income on a *pro forma* basis.

Following the proposed transactions, Sempra and each of its public utility subsidiaries, except Frontier Energy and Frontier Pacific, will be organized in California. Frontier Energy and Frontier Pacific will be organized in North Carolina. Applicants contend that they, and each of their subsidiaries, will qualify for a section 3(a)(1) exemption upon consummation of the proposed transactions.

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23323; 812-11172]

### Weiss, Peck & Greer Funds Trust, et al.; Notice of Application

July 21, 1998.

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

**ACTION:** Notice of application for exemption under Section 6(c) of the

Investment Company Act of 1940 (the "Act") from Section 15(a) of the Act.

**SUMMARY OF APPLICATION:** The requested order would permit the implementation, without prior shareholder approval, of new investment advisory and subadvisory agreements (the "New Advisory Agreements") for a period of up to 90 days following the consummation of the acquisition of the outstanding membership interests of Weiss, Peck & Greer, L.L.C. ("WPG") by Robeco Groep N.V. ("Robeco") (but in no event later than October 31, 1998) (the "Interim Period"). The order would also permit payment of all fees earned under the new advisory agreements during the Interim Period following shareholder approval.

**APPLICANTS:** Weiss, Peck & Greer Funds Trust, on behalf of WPG Government Money Market Fund, WPG Tax Free Money Market Fund, WPG Core Bond Fund, WPG Intermediate Municipal Bond Fund, and WPG Quantitative Equity Fund; Tomorrow Funds Retirement Trust, on behalf of Tomorrow Long-term Retirement Fund, Tomorrow Medium-Term Retirement Fund, and Tomorrow Short-Term Retirement Fund; SEI Tax Exempt Trust, on behalf of SEI Institutional Tax Free Portfolio, SEI Pennsylvania Tax Free Portfolio, SEI California Tax Free Portfolio, and SEI Tax Free Portfolio; Weiss, Peck & Greer International Fund ("International Fund"); WPG Growth and Income Fund; WPG Growth Fund, WPG Tudor Fund; and RWB/WPG U.S. Large Stock Fund (collectively, the "Funds"); and WPG.

**FLING DATES:** The application was filed on June 15, 1998, and amended on July 17, 1998.

**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 August 18, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: if to Weiss, Peck & Greer Funds Trust; Tomorrow Funds

Retirement Trust; Weiss, Peck & Greer International Fund; WPG Growth and Income Fund; WPG Growth Fund; WPG Tudor Fund; RWB/WPG U.S. Large Stock Fund; or WPG, One New York Plaza, New York, NY 10004; if to SEI Tax Exempt Trust, One Freedom Valley Drive, Oaks, PA 19456.

**FOR FURTHER INFORMATION CONTACT:** Timothy R. Kane, Staff Attorney, at (202) 942-0615, or Edward P. Macdonald, 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, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

### Applicants' Representations

1. Each Fund is either an open-end management investment company registered under the Act or a series of the company. Weiss, Peck and Greer Funds Trust currently offers five series: WPG Government Money Market Fund, WPG Tax Free Money Market Fund, WPG Intermediate Municipal Bond Fund, WPG Core Bond Fund, and WPG Quantitative Equity Fund. Tomorrow Funds Retirement Trust includes, for purposes of this application, three Series: Tomorrow Long-term Retirement Fund, Tomorrow Medium-Term Retirement Fund, and Tomorrow Short-term Retirement Fund. SEI Tax Exempt Trust includes, for purposes of this application, four series: SEI Institutional Tax Free Portfolio, SEI Pennsylvania Tax Free Portfolio, SEI California Tax Free Portfolio, and SEI Tax Free Portfolio. Each of the other Funds is a single series investment company. Tomorrow Funds Retirement Trust and RWB/WPG U.S. Large Stock Fund are organized as Delaware business trusts. All the other Funds are organized as Massachusetts business trusts.

2. WPG serves as the investment adviser to each Fund pursuant to a separate investment advisory agreement and is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"). Hill Samuel Asset Management Limited ("Hill Samuel") serves as the investment subadviser to the International Fund pursuant to an investment subadvisory agreement (together with the investment advisory agreements, the "Current Advisory Agreements") and is an investment adviser registered under the Advisers Act.

3. The owners of the outstanding voting securities of WPG ("Sellers")

<sup>3</sup> Specifically, the NCUC authorized Frontier Pacific and Frontier Utilities to contribute approximately \$12 million of equity and capital to Frontier Energy. In addition, the NCUC authorized Frontier Energy to borrow \$40 million, subject to certain conditions.

have agreed to sell to Robeco all of their interests in WPG (the "Acquisition"). After the Acquisition, WPG will be a wholly-owned subsidiary of Robeco. The Acquisition is expected to close during the third quarter of 1998.

4. The Acquisition will result in the assignment and automatic termination of the Current Advisory Agreements. The Board of Trustees ("Board"), including a majority of the Independent Trustees ("Independent Trustees"), of SEI Tax Exempt Trust met on May 18 and June 10, 1998, and approved the New Advisory Agreements between WPG and each of the SEI Funds.<sup>1</sup> The Boards, including a majority of the Independent Trustees, of the WPG Funds met on May 19, 1998, and approved the New Advisory Agreements between WPG and each of the WPG Funds and among Hill Samuel, WPG, and the International Fund. Each New Advisory Agreement contains the same terms and conditions as its corresponding Current Advisory Agreement except for the dates of execution, effectiveness, and termination and the inclusion of escrow arrangements, discussed below.<sup>2</sup>

5. Applicants propose to enter into an escrow arrangement with an unaffiliated escrow agent. Fees earned by WPG during the Interim Period under the New Advisory Agreements would be paid into an interest-bearing escrow account. The escrow agent would release the monies in the escrow account attributable to a Fund (a) to WPG only upon shareholder approval of the New Advisory Agreement by the Fund's shareholders, or (b) to the Fund if the Interim Period has ended and the New Advisory Agreement is not approved by shareholders. Before the escrow agent releases the monies, the Board of the appropriate Fund would be notified.

#### Applicant's Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to serve or act as 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 such registered company, and that such 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 controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that upon consummation of the Acquisition, Robeco will acquire all of WPG's outstanding voting securities, resulting in the "assignment" and termination of each Current Advisory Agreement.

3. Rule 15a-4 under the Act provides, among other things, that if an investment advisory contract with an investment company is terminated by assignment, an investment adviser may act as such for the company pursuant to a written contract that has not been approved by that company's shareholders during the 120-day period following such termination, *provided that* (1) The new contract is approved by that company's board of directors, including a majority of the non-interested directors; (2) 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 (3) neither the adviser nor any controlling person of the adviser "directly or indirectly receive[s] money or other benefit" in connection with the assignment. However, applicants state that they cannot rely on Rule 15a-4 because the Sellers will be receiving a benefit from the Acquisition.

4. Section 6(c) of the Act 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 request an order under Section 6(c) of the Act to permit the implementation, without prior shareholder approval, of the New Advisory Agreements.

5. Applicants state that the form and timing of the Acquisition were determined in response to a number of business factors primarily unrelated to the Funds. Applicants assert that there is insufficient time to obtain shareholder approval of the New Advisory Agreements before the Acquisition is consummated. Applicants further assert that the requested relief would prevent any

disruption in the delivery of investment advisory services to the Funds during the Interim Period.

6. Applicants state that the Boards, including a majority of the Independent Trustees, after evaluation and with the advice of counsel, voted to approve the New Advisory Agreements to become effective upon the termination of the Current Advisory Agreements and to submit the New Advisory Agreements to the shareholders of each of the Funds for approval. The Boards received from WPG information reasonably necessary to evaluate, among other things, the terms of the New Advisory Agreements and determined that the New Advisory Agreements were in the best interests of the Funds and their respective shareholders.

7. Fees earned by WPG during the Interim Period would be paid into an interest-bearing account maintained by an independent escrow agent who would release the monies either to WPG upon shareholder approval of the New Advisory Agreement, or to the Fund if the Interim Period has ended and the shareholders have not approved the New Advisory Agreement.

8. Applicants state that the requisite shareholder meetings are scheduled to be held on July 29, 1998, for all Funds. Applicants further state that the requested relief would facilitate the orderly and reasonable consideration of the New Advisory Agreements with respect to those Funds for which a quorum of shareholders has not been obtained.

9. Applicants submit that the scope and quality of services provided to the Funds during the Interim Period will not be diminished. The applicants represent that, during the Interim Period, each Fund will receive advisory services of at least equivalent scope and quality, and such services will be provided by the same personnel (including managing directors and portfolio managers) under the New Advisory Agreements as it received under the Current Advisory Agreements. Further, the New Advisory Agreements have the same terms and conditions as the Current Advisory Agreements, except for the dates of execution, effectiveness, and termination and the inclusion of escrow arrangements.

#### Applicant's 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 have the same terms and conditions as the Current Advisory Agreements, except in each case for the dates of

<sup>1</sup> In this notice, the SEI Tax Exempt Trust is occasionally referred to as the "SEI Funds," and all other Funds are occasionally referred to as the "WPG Funds."

<sup>2</sup> The New Advisory Agreements approved by the Boards of the WPG Funds do not include the escrow arrangements. The Boards of the WPG Funds will meet on July 22, 1998, to consider including the escrow arrangements. Applicants acknowledge that, with respect to each WPG Fund's New Advisory Agreement, they may not rely on the requested order unless the respective Boards, including a majority of the Independent Trustees, approve including the escrow provisions in the New Advisory Agreements prior to the consummation of the Acquisition.

execution, effectiveness, and termination and the inclusion of escrow arrangements.

2. Fees earned by WPG during the Interim Period under the New Advisory Agreements will be maintained in interest-bearing escrow accounts with an unaffiliated escrow agent, and the amounts in such accounts (including interest earned on such amounts) will be paid (a) to WPG only upon approval of the New Advisory Agreements by the Funds' respective shareholders or (b) in the absence of such approval by shareholders of a Fund, to such Fund.

3. The Funds will hold special meetings of shareholders to vote on the approval or disapproval of the New Advisory Agreements on or before October 31, 1998.

4. WPG will bear the costs relating to the preparation and filing of this application and the costs relating to the solicitation of the approvals of the Funds' shareholders of the New Advisory Agreements necessitated by the Acquisition; *provided, however*, that the Funds may bear a portion of the cost of soliciting shareholders approval for proposals unrelated to the Acquisition.

5. WPG will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period under the New Advisory Agreements will be at least equivalent, in the judgment of the Boards, including a majority of the Independent Trustees, to the scope and quality of services provided under the Current Advisory Agreements. In the event of any material change in personnel providing services pursuant to the New Advisory Agreements during the Interim Period, WPG will apprise and consult the Boards of the affected Funds to assure that such Board, including a majority of the Independent Trustees, are satisfied that the services provided by WPG will not be diminished in scope or quality.

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40228; File No. SR-Amex-98-24]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Merrill Lynch EuroFund Market Index Target Term Securities

July 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 1998, the American Stock Exchange, Inc. ("Exchange" or "Amex") 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 list and trade under Section 107A of the Exchange's Company Guide, Merrill Lynch EuroFund Market Index Target Term Securities<sup>SM</sup> ("MITTS<sup>®</sup> Securities"). The value of the MITTS Securities will be based in whole or in part on changes in the value of the Merrill Lynch EuroFund Index ("EuroFund Index").

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.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

#### 1. Purpose

Under Section 107A of the Exchange's *Company Guide*, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>3</sup> The Exchange seeks to list the MITTS Securities for trading under Section 107A of the Exchange's *Company Guide*. The MITTS Securities are structured as mutual fund linked notes, the value of which will be linked, in whole or in part, to the adjusted total return value of Class B Shares of the Merrill Lynch EuroFund ("EuroFund"),<sup>4</sup> a mutual fund registered under the Investment Company Act of 1940. The EuroFund is a "diversified company" as defined in Section 5(b) of the Investment Company Act of 1940<sup>5</sup> and the securities held by the EuroFund are issued by companies based in five or more countries.

The Exchange represents that MITTS Securities will be senior, unsecured debt securities that will conform to the listing guidelines under Section 107A of the Exchange's *Company Guide*. Although a specific maturity date will not be established until the time of the offering, the MITTS Securities will provide for a maturity of between two and seven years from the date of issuance. MITTS Securities may provide for periodic payments and/or payments at maturity based in whole or in part on changes in the value of the EuroFund Index, an index based on the adjusted total return of the Class B Shares of the EuroFund.<sup>6</sup> At maturity, holders of the

<sup>3</sup> Securities Exchange Act Release No. 27753 (Mar. 1, 1990), 55 FR 8626 (Mar. 8, 1990).

<sup>4</sup> According to the prospectus prepared by the underwriter, the Eurofund is a diversified, open-end management company that seeks to provide shareholders with capital appreciation primarily through investment in equities of corporations domiciled in European countries. While there are no prescribed limits on geographic distribution within the European community, it currently is anticipated that a majority of the EuroFund's assets will be invested in equity securities of issuers domiciled in Western European countries. Current income from dividends and interest will not be an important consideration in selecting portfolio securities. The Eurofund expects that under normal market conditions at least 80% of its net assets will be invested in European corporate securities, primarily common stocks, and debt and preferred securities convertible into common stocks.

<sup>5</sup> 15 U.S.C. 80a-5(b).

<sup>6</sup> The EuroFund Index will measure the adjusted total return value of Class B Shares of the EuroFund. The total return value reflects the change in net asset value of Class B Shares of the