

## OFFICE OF MANAGEMENT AND BUDGET

### OMB Circular A-21, Cost Principles for Educational Institutions

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Final Revision.

**SUMMARY:** The Office of Management and Budget (OMB) is adopting the interim final revision to OMB Circular A-21, "Cost Principles for Educational Institutions," to allow trustees' travel expenses.

**DATES:** Effective November 27, 1998.

**FOR FURTHER INFORMATION CONTACT:** Gilbert Tran, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, at (202) 395-3993. Non-Federal organizations should contact the organization's cognizant Federal agency. The revised Circular is available on the OMB Home Page at <http://www.whitehouse.gov/WH/EOP/omb>, as well as from the EOP Publications Office at (202) 395-7332.

**SUPPLEMENTARY INFORMATION:** On June 1, 1998 (63 FR 29786), the Office of Management and Budget (OMB) issued an interim final revision to OMB Circular A-21, "Cost Principles for Educational Institutions," to allow trustees' travel expenses. Only two comments were received in response to the interim final revision; both supported the revision. Accordingly, OMB is adopting in final form, without change, the interim final revision to Circular A-21 which was published at 63 FR 29786 on June 1, 1998.

**Jacob J. Lew,**  
*Director.*

OMB hereby revises Section J.50 of OMB Circular A-21 to read as follows:

50. Trustees. Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in Section 48.

[FR Doc. 98-28704 Filed 10-26-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23492; 812-10662]

### The Select Sector SPDR Trust, et al.; Notice of Application

October 20, 1998.

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

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit certain open-end management investment companies, whose portfolios will consist of the component securities of certain indices, to issue shares of limited redeemability; permit secondary market transactions in the shares of the companies at negotiated prices; and permit affiliated persons of the companies to deposit securities into, and receive securities from, the companies in connection with the purchase and redemption of aggregations of the companies' shares.

**APPLICANTS:** The Select Sector SPDR Trust, the Index Exchange Listed Securities Trust (each a "Trust" and together, the "Trusts"), State Street Bank and Trust Company (the "Adviser"), and ALPS Mutual Funds Services, Inc. (the "Distributor").

**FILING DATES:** The application was filed on May 13, 1997, and amended on September 4, 1998. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

**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 November 12, 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, N.W., Washington, D.C. 20549. The Select Sector SPDR Trust, the Index Exchange Listed Securities Trust, and State Street Bank and Trust Company, 1776, Heritage Drive, AFB4, North Quincy, MA 02171, Attn: Joseph J. McBrien, Esq.; and ALPS Mutual Fund Services, Inc., 370 Seventeenth Street, Suite 2, Denver, CO 80202, Attn: Tom Carter.

**FOR FURTHER INFORMATION CONTACT:** Brian T. Hourihan, Senior Counsel, at (202) 942-0526, 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 from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549 (tel. (202) 942-8090).

### Applicants Representations

1. Each Trust is an open-end management investment company organized as a Massachusetts business trust and registered under the Act. Each Trust will have separate investment portfolios (each a "Fund"). The Adviser will act as investment adviser and custodian for each Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act"), will serve as the principal underwriter of each Fund on an agency basis.

2. Each Fund will invest in a portfolio of equity or fixed income securities generally consisting of the component securities of a specified securities index ("Portfolio Securities"). The indices will include: the Standard & Poor's 500 Basic Industries Select Sector Index, the Standard & Poor's 500 Consumer Services Select Sector Index, the Standard & Poor's 500 Consumer Staples Select Sector Index, the Standard & Poor's 500 Cyclical and Transportation Select Sector Index, the Standard & Poor's 500 Energy Select Sector Index, the Standard & Poor's 500 Financial Select Sector Index, the Standard & Poor's 500 Industrial Select Sector Index, the Standard & Poor's 500 Technology Select Sector Index and the Standard & Poor's 500 Utilities Select Sector Index (collectively, the "Select Sector SPDR Indices"),<sup>1</sup> as well as the Merrill Lynch, Pierce, Fenner & Smith

<sup>1</sup> The Select Sector SPDR Indices track the movements of companies that are components of the Standard & Poor's 500 Index by industry sectors. The Select Sector SPDR Indices will be calculated by the Index Services Group of the American Stock Exchange, Inc. ("AMEX") using a "modified market capitalization" methodology to ensure that each component security of an Index is represented in proportion to the percentage of the total market capitalization of the Index represented by the Index. The Select Sector SPDR Trust is permitted to use the Select Sector SPDR Indices pursuant to a licensing agreement with The Standard & Poor's Corporation, the AMEX, and Merrill Lynch, Pierce, Fenner & Smith Incorporated. The Select Sector SPDR Indices' values will be disseminated every 15 seconds over the Consolidated Tape Association ("Consolidated Tape").

Incorporated Technology 100 Index (the "Technology 100 Index," and together with the Select Sector SPDR Indices, the "Indices").<sup>2</sup>

3. The investment objective of each Fund will be to provide investment results that correspond, before expenses, generally to the price and yield performance of its relevant Index. A Fund may not hold all of the underlying securities that comprise an Index in certain instances. When a potential component security is illiquid, a Fund may hold a representative sample of the component securities of the Index determined using a technique known as "portfolio optimization."<sup>3</sup> Applicants anticipate that a Fund that utilizes the portfolio optimization technique will not track its Index with the same degree of accuracy as an investment vehicle that invested in every component security of the Index with the same weighting. Applicants also state that over time the Adviser will be able to employ the portfolio optimization technique so that the expected tracking error of a Fund relative to the performance of its Index will be less than 5 percent.

4. Shares of a Fund ("Shares") generally will be issued in aggregations of 50,000 Shares ("Creation Units") depending on the Fund, as specified in the Fund's prospectus. The price of a Creation Unit will be approximately \$1,000,000 to \$1,100,000 (based on the values of the Indices as of October 6, 1998). To be eligible to purchase a Creation Unit, an investor must either be a participant in the Continuous Net Settlement ("CNS") System of the National Securities Clearing Corporation ("NSCC"), or a Depository Trust Company ("DTC") participant. An investor wishing to purchase a Creation Unit from a Fund will have to transfer to the Fund a "Fund Deposit" consisting of: (i) a portfolio of securities that has been selected by the custodian to

correspond to the returns on the Index ("Deposit Securities"),<sup>4</sup> and (ii) a cash payment to equalize any differences between the market value per Creation Unit of the Deposit Securities and the net asset value ("NAV") per Creation Unit of the Portfolio Securities ("Cash Component"). Certain of the Funds may include as part of the Cash Component, a "Dividend Equivalent Payment" which is an amount equal per Creation Unit to the dividends accrued on the Portfolio Securities of a Fund since the last dividend payment by the Fund, net of expenses and liabilities.<sup>5</sup> An investor purchasing a Creation Unit from a Fund will be charged a purchase fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Fund incurring costs in connection with the purchase of the Creation Units.<sup>6</sup> Each Fund will disclose in its prospectus and/or statement of additional information ("SAI") the Transaction Fees charged by the Fund or the method of calculating the Transaction Fees.

5. Orders to purchase Creation Units will be placed with the Distributor who will be responsible for transmitting the

orders to each Fund. The Distributor will issue confirmations of acceptance, issue delivery instructions to the Fund to implement the delivery of Creation Units, and maintain records of the orders and the confirmations. The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Units.

6. Persons purchasing Creation Unit-size aggregations of Shares from a Fund may hold the Shares or sell some or all of them in the secondary market. Shares will be listed on the AMEX and traded in the secondary market as other equity securities. An AMEX specialist will be assigned to make a market in Shares. The price of Shares on the AMEX will be based on a current bid/offer market and will be in the range of \$15 to \$27 per Share (based on the values of the Indices as of October 6, 1998). Transactions involving the sale of Shares will be subject to customary brokerage commissions and charges. Applicants expect that the price at which the Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX specialist, in providing for a fair and orderly secondary market for Share, also may purchase Shares for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.<sup>7</sup>

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Unit-size aggregations through each Fund.<sup>8</sup> To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive a portfolio of securities identical to the Deposit Securities in effect on the date the redemption request is made. An inventory may receive the cash equivalent of a Portfolio Security upon its request if, for example, the investor

<sup>2</sup>The Technology 100 Index tracks the movements of the 100 largest domestically traded stocks and American Depository Receipts, by market capitalization after screening for liquidity, of companies in technology-related industries. The Technology 100 Index will be calculated by the Index Services Group of AMEX using an "equal dollar weighting" methodology to ensure that each component security of the Index is represented in an approximately equal dollar amount in the Index. The Technology 100 Index's value will be disseminated every 15 seconds over the consolidated Tape.

<sup>3</sup>The Adviser will consider each component security in an Index for inclusion in a Fund based on the security's contribution to certain capitalization, industry, and fundamental investment characteristics. The Adviser will seek to construct the portfolio of a Fund so that, in the aggregate, its capitalization, industry, and fundamental investment characteristics perform like those in the corresponding Index.

<sup>4</sup>The identity and number of shares of the Deposit Securities required for each Fund will change as rebalancing adjustments and corporate events are reflected from time to time by the Adviser. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the securities constituting an Index.

<sup>5</sup>On each business day, the custodian in consultation with the Adviser will make available, immediately prior to the opening of trading on the AMEX, a list of the names and the required number of shares of each Deposit Security, as well as the Cash Component, each as of the prior business day, per outstanding shares of each Fund. The Fund Deposit will be applicable to effect purchases of Creation Units until the Fund Deposit composition is next announced. In addition, each Fund reserves the right to permit or require the substitution of an amount of cash to be added to the Cash Component to replace any Deposit Security that may be unavailable or unavailable in sufficient quantity for delivery to the Fund upon the purchase of a Creation Unit, or which may be ineligible for transfer through the CNS of the NSCC or ineligible for trading by an NSCC participant or the investor on whose behalf the participant is acting. In addition, the AMEX will disseminate every 15 seconds throughout the trading day via the Consolidated Tape an amount representing on a per Share basis the sum of the Dividend Equivalent Payment effective through and including the prior business day, plus the current value of the Deposit Securities.

<sup>6</sup>The Transaction Fee for each Fund will be separately determined. The Transaction Fee will be limited to amounts determined by the Adviser to be appropriate and will take into account the transaction costs associated with the Deposit Securities of each Fund. Brokerage commissions incurred by a Fund in connection with the acquisition of any Index Securities ineligible for transfer through the systems of DTC and therefore ineligible for transfer through the Shares Clearing Process will be charged to the Fund and will affect the value of all Shares of the Fund, unless the Adviser adjusts the Transaction Fee.

<sup>7</sup>Share will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Records reflecting the beneficial owners of Shares will be maintained by DTC or its participants.

<sup>8</sup>Creation Units may be redeemed through either NSCC or DTC. Investors who redeem through DTC will pay a higher Transaction Fee.

were constrained from effecting transactions in the Portfolio Security by regulation or policy. A redeeming investor will also receive a Dividend Equivalent Payment, and may also receive an amount of cash to equalize any differences between the market value of the Portfolio Securities and the NAV per Creation Unit. A redeeming investor will pay a Transaction Fee calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.<sup>9</sup>

9. Because each Fund will redeem Creation Units in kind, a Fund will not have to maintain cash reserves for redemptions. This will allow the assets of each Fund to be committed as fully as possible to tracking its Index. Accordingly, applicants state that each Fund will be able to track its Index more closely than certain other investment products that must allocate a greater portion of their assets for cash redemptions.

10. Applicants state that neither Trust nor any Fund will be marketed or otherwise held out as a "mutual fund." Rather, applicants state that each Fund will be marketed as an "exchange-traded fund." All marketing materials will refer to a Fund as an "investment company" and "fund" without reference to an "open-end" or "mutual fund," except to contrast a Fund with a conventional open-end management investment company. In all marketing materials where the method of obtaining, buying or selling Shares is described, applicants will include a statement to the effect that Shares are not redeemable through a Fund except in Creation Units. The same type of disclosure will be provided in each Fund's prospectus, SAI, advertising materials, and all reports to shareholders.<sup>10</sup>

<sup>9</sup> See note 6, *supra*.

<sup>10</sup> Applicants state that persons purchasing Creation Units will be cautioned in a Fund's prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933 ("Securities Act"). For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Shares, and sells Shares directly to its customers; or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. A Fund's prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. A Fund's prospectus also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the

### Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c-1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, 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.

#### *Sections 5(a)(1) and 2(a)(32) of the Act*

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Trust to register and operate as an open-end management investment company. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at approximately their NAV.

#### *Section 22(d) of the Act and Rule 22c-1 Under the Act*

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares

meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) and rule 22c-1. Applicants request an exemption from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (1) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (iii) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sale price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state (i) that secondary market trading in Shares does not involve the Fund as parties and cannot result in dilution of an investment in Shares, and (ii) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

#### *Section 17(a) of the Act*

7. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units will be "in-kind" rather than cash transactions, section 17(a) may prohibit affiliated persons of the Fund from purchasing or redeeming Creation Units. Because the definition of "affiliated

person" of another person in section 2(a)(3) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with a Fund so long as fewer than twenty Creation Units of the Fund are extant. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit affiliated persons of the Funds to purchase and redeem Creation Units.

8. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting affiliated persons of a Fund described above from purchasing or redeeming Creation Units. The composition of a Fund Deposit made by a purchaser or given to a redeeming investor will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Portfolio Securities. Therefore, applicants state that "in kind" purchases and redemptions will afford no opportunity for an affiliated person of a Fund to effect a transaction detrimental to the other holders of its Shares. Applicants also believe that "in kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Fund.

### Applicants' Conditions

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

1. Applicants will not register a new Fund of a Trust, whether identical or similar to the Funds, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless Applicants have requested and received with respect to such new Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission.

2. Each Fund's prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Fund and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40569; File No. SR-Amex-97-33]

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2, 3, and 4 to the Proposed Rule Change Relating to Listing and Trading Options on the Pauzé Tombstone Common Stock Index<sup>SM</sup>

October 19, 1998.

### I. Introduction

On October 8, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to authorize Options on the Pauzé Tombstone Common Stock Index.

The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on December 12, 1997.<sup>3</sup> No comments were received on the proposal. On May 29, August 19, and August 25, 1998, respectively, the Exchange submitted Amendment Nos. 2,<sup>4</sup> 3,<sup>5</sup> and 4<sup>6</sup> to the proposed rule change. This order approves the proposal and grants accelerated approval to Amendment Nos. 2, 3, and 4.

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

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

<sup>3</sup> Securities Exchange Act Release No. 39407 (Dec. 5, 1997), 62 FR 65463.

<sup>4</sup> See Letter from Scott G. Van Hatten, Legal Counsel, Derivatives Legal Department, Amex, to David Sieradzki, Attorney, Division of Market Regulation ("Division"), SEC dated May 26, 1998 ("Amendment No. 2").

<sup>5</sup> See Letter from Scott G. Van Hatten, Legal Counsel, Derivatives Legal Department, Amex, to David Sieradzki, Attorney, Division, SEC dated August 18, 1998 ("Amendment No. 3").

<sup>6</sup> See Letter from Scott G. Van Hatten, Legal Counsel, Derivatives Legal Department, Amex, to David Sieradzki, Attorney, Division, SEC dated August 24, 1998 ("Amendment No. 4").

## II. Description of the Proposal

### A. General

Amex proposes to trade standardized options on the Pauzé Tombstone Common Stock Index ("Index"), a cash-settled narrow based index developed by Pauzé Swanson Capital Management Co.<sup>TM</sup> ("Pauzé"). The Index is composed of the stocks of ten companies involved in the death care services or products industry. In addition, the Amex proposes to amend Rule 902C to include the Pauzé Tombstone Common Stock Index in the disclaimer provisions of that rule.<sup>7</sup>

### B. Composition of the Index

The Index is composed of the stocks of ten companies involved in providing death care services or products consisting of funeral services, cemetery services, and funeral and cemetery support goods and services. The Index also currently serves as the basis for an index mutual fund being offered by Pauzé, which has been registered with the Commission as an investment adviser since 1993. Pauzé's president, Philip C. Pauzé, has specialized in providing investment management for the assets of pre-need funeral accounts and cemetery endowment care funds since 1985, and is financial consultant to several state- and nation-wide funeral trusts and funeral directors associations' retirement plans.

The Exchange will use a modified market capitalization methodology to calculate the value of the Index.<sup>8</sup> The Index was initialized at a level of 100 at the close of trading on its base date of December 31, 1985.<sup>9</sup>

### C. Eligibility Standards for Index Components

Pauzé, as developer of the Index, is responsible for selecting and maintaining the list of companies to be included in the Index. Only stocks of companies which derive at least fifteen percent of their revenues from the provision of goods and/or services to the death care sector of the economy are eligible to be included. The Index conforms with the criteria of Exchange

<sup>7</sup> Amex Rule 902 will be amended to add subsection (h) which will provide, among other things, that Pauzé Swanson Capital Management Co. does not guarantee the accuracy or completeness of the Index or any data included therein, nor does Pauzé Swanson Capital Management Co. make any warranty, either express or implied, as to the results to be obtained by any person or entity from the use of the Index or any data included therein.

<sup>8</sup> See *infra* section II. D. entitled "Index Calculation" for a description of this calculation method.

<sup>9</sup> The Index's value at the close of trading on August 19, 1997 was 523.04.