shares of Nasdaq it owned, and Nasdaq also issued and sold additional shares. As a result, the NASD's ownership interest in Nasdaq was reduced from 100% to 60%. The second phase of the private placement was completed on January 18, 2001, and as a result the NASD's ownership interest in Nasdaq was further reduced to 40%.[3]

Nasdaq currently is operated by the NASD pursuant to a Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries as approved by the Commission.[4] Until approval of Nasdaq's exchange registration, the shares of common stock underlying unexercised and unexpired warrants, as well as the shares of common stock purchased through the valid exercise of warrants, will be voted by a trustee at the direction of the NASD. Thus, even though the NASD has divested itself of its ownership interest and currently does not own a controlling interest in Nasdaq, the NASD nonetheless exercises effective control over Nasdaq through voting until the Commission approves Nasdaq's exchange registration.

II. Nasdaq's Exchange Registration

Nasdaq currently is exempt from the definition of ''exchange'' under Rule 3a1–1 because it is operated by the NASD.[5] Before the NASD may relinquish control, Nasdaq must register as a national securities exchange.[6] Accordingly, Nasdaq has filed a complete Form 1, including all of the required exhibits, to register as a national securities exchange.

The Form 1 provides detailed information about Nasdaq and how it proposes to satisfy the requirements of the Exchange Act. The Commission shall grant such registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to Nasdaq are satisfied.[7] There are a number of implications to Nasdaq's separation from the NASD and application to register and operate as an exchange. For example, Nasdaq will have to demonstrate that it has the capacity to comply, and enforce compliance by its members, with the Exchange Act and its own rules.[8] In addition, while members of a national securities association are not subject to section 10(a)[9] when trading Nasdaq stocks, if the Commission approves Nasdaq's registration as an exchange, Section 10(a) will apply to such trading. Moreover, while Nasdaq members are not subject to section 11(a)[10] of the Exchange Act for their Nasdaq transactions, they would be subject to section 11(a) if Nasdaq becomes an exchange. Furthermore, while the Form 1 contemplates that Nasdaq will be an exchange trading Nasdaq National Market securities and Nasdaq SmallCap securities, the future operation of the Over-the-Counter Bulletin Board must be addressed. Before Nasdaq can register as a national securities exchange, it must be able to satisfy its obligations under section 11A[11] of the Act. Finally, Nasdaq's exchange registration has implications for the NASD which, as a national securities association, will continue to be required to collect bids, offers and quotation sizes for those entities seeking to trade listed securities, including Nasdaq securities, otherwise than on a national securities exchange.[12] The Commission notes that the NASD's quotation and transaction reporting facility must be operational upon Nasdaq's exchange registration.

III. Solicitation of Comments

A complete copy of Nasdaq's Form 1 is available in the Commission's Public Reference Room, File No. 10–131. Portions of Nasdaq's Form 1, including Nasdaq's rules, also are available on the Commission's website at *http://www.sec.gov/rules/other.shtml*. Interested persons should submit three copies of their written data, views and opinions on Nasdaq's Form 1 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* Comments must be received on or before July 30, 2001. All comment letters should refer to File No. 10–131; this file number should be included on the subject line if comments are submitted using E-mail. The Commission requests that commenters focus on issues raised in Nasdaq's Form 1, File No. 10–131, when submitting comments in response to this notice. Commenters wishing to address another specific rule filing by the NASD pending with the Commission should direct their comments to that specific rule proposal. Copies of all submissions, amendments, and all written statements will be available for public inspection and copying at the Commission's Public Reference Room. Electronically submitted comment letters will be posted on the Commission's Internet website (*http://www.sec.gov*).

For questions regarding this release, contact Rebekah Liu, Special Counsel, at (202) 942–0133; Geoffrey Pemble, Attorney, at (202) 942–0757, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549–1001.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–14831 Filed 6–12–01; 8:45 am]

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[3] For both phases of the private placement, the NASD's percentage ownership of Nasdaq assumes that all warrants sold are fully exercised. Recently, Nasdaq also announced an agreement to sell subordinated debentures convertible into Nasdaq common stock to a private equity firm. If fully converted, this private equity firm would own approximately 9.8% of Nasdaq common stock. The Division currently is considering changes to Nasdaq's Certificate of Incorporation that would be necessary to consummate the sale of these debentures.

[4] Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996).

[5] Pursuant to Rule 3a1–1, an organization, association, or group of persons shall be exempt from the definition of ''exchange'' if it is operated by a national securities association. Unless another exemption from the definition of ''exchange'' applies, such organization, association, or group of persons that otherwise meets the definition of an ''exchange'' must register as such with the Commission. 17 CFR 240.3a1–1.

[6] The voting trust will automatically expire and the NASD will no longer control or operate Nasdaq upon Nasdaq's registration as an exchange.

[7] Section 19(a) of the Exchange Act, 15 U.S.C. 78(s)(a).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78j(a).

[10] 15 U.S.C. 78k(a).

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 240.11Ac1–1(b)1(ii).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24999; 812–12406]

AB Funds Trust, *et al.;* Notice of Application

June 7, 2001.

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

ACTION: Notice of application under: (a) Section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from section 12(d)(1) of the Act; sections 6(c) and 17(b) of the Act requesting an exemption from section 17(a) of the Act; and section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions; (b) section 12(d)(1)(J) of the Act requesting an exemption from section 12(d)(1)(G)(i)(II) of the Act; (c) sections 6(c), 10(f) and 17(b) of the Act requesting an exemption from sections 17(a), 17(e), 10(f) and 12(d)(3) of the Act and rule 17e-1 under the Act; and (d) section 17(b) of the Act requesting an exemption from section 17(a) of the Act.

Summary of the Application: Applicants seek an order to permit certain common trust funds to transfer their assets to certain series of a registered open-end management investment company in exchange for shares of the series, and to permit certain series of the open-end management investment company (a) to invest cash reserves in an affiliated money market fund; (b) to operate as funds of funds, investing a portion of their assets directly in securities; and (c) advised by several investment advisers, to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers or to purchase securities in certain underwritings. The transactions would be between a broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3-1 under the Act.

Applicants: AB Funds Trust (''Trust''), Annuity Board of the Southern Baptist Convention (''Annuity Board'') and SBC Financial Services, Inc. (''Adviser'').

Filing Dates: The application was filed on January 12, 2001 and amended on June 7, 2001. Applicants have agreed to file another amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 28, 2001 and should be accompanied by proof of service on the 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 Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Rodney R. Miller, Esq., Annuity Board of the Southern Baptist Convention, 2401 Cedar Springs Road, Dallas, Texas 75201–1407.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646 (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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102, (tel. (202) 942–8090).

Applicants' Representations

A. Overview

1. The Annuity Board is a Texas non-profit corporation that sponsors and maintains retirement and welfare benefit plans (''plans'') for the employees of churches and organizations controlled by, or associated with, the Southern Baptist Convention (''SBC''). The plans invest primarily in four Southern Baptist investment funds (''BIFs'') and nine Southern Baptist investment pools (''BIPs''), all of which are maintained by the Annuity Board. The BIFs allocate investments among the BIPs to achieve an asset allocation that is appropriate to each BIF's investment strategy, generally balancing fixed income and equity exposure in proportion to a BIF's risk level. The BIFs and the BIPs are managed in accordance with the moral and ethical principles of the SBC and are exempt from registration as investment companies pursuant to section 3(c)(14) of the Act.

2. The Annuity Board has been charged with providing an expanded range of investment opportunities to Southern Baptist organizations and to persons eligible to participate in the plans provided by the Annuity Board. These expanded services, which would not be consistent with maintenance of the BIPs' and BIFs' exemption from registration under the Act, will be provided by the Trust.

3. The Trust, established as a Delaware business trust, will register under the Act as an open-end management investment company. The Trust will have thirteen series (collectively, the ''Funds''). Four of the Funds will operate as funds of funds pursuant to Section 12(d)(1)(G) under the Act (the ''Blended Funds''). The Blended Funds will allocate their investments among the nine other Funds (the ''Select Funds''). Investors may also purchase shares of the Select Funds directly.

4. The Adviser, a controlled affiliate of the Annuity Board, will act as investment adviser to the Trust, and will register as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), prior to serving as investment adviser to the Trust. With the exception of two Funds, at least two subadvisers will exercise discretion over each Select Fund's assets (''Subadvisers''). Each Subadviser will be registered, or exempt from registration, under the Advisers Act. The Board of Trustees of the Trust (''Board'') will have overall responsibility for the management of the Funds.

5. The Annuity Board proposes to transfer the assets of the BIPs and the BIFs to the corresponding Select Funds and the Blended Funds, in exchange for shares of those Funds (the ''Transfer''). Following the Transfer, the BIPs and BIFs will terminate. Applicants request an order under the Act to permit the Transfer and exemptions from certain provisions of the Act relating to the operation of the Trust. Applicants request that the relief (except the relief relating to the Transfer) apply to any future series of the Trust and to any future registered open-end management investment company advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser.[1]

B. Investment of Cash Reserves in the Money Market Fund

1. Other than the Select Fund that is a money market Fund that complies with rule 2a–7 under the Act (''Money Market Fund''), each Select Fund (an ''Investing Select Fund'') has, or may be expected to have, cash balances that have not been invested in portfolio securities (''Cash Reserves''). The Cash Reserves may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions or dividend payments, and new cash received from investors.

2. Applicants request an order to permit the Investing Select Funds to invest their Cash Reserves in shares of the Money Market Fund and to permit the Money Market Fund to sell its

[1] Applicants state that any entity that currently intends to rely on the exemptive order requested is named as an applicant and that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

shares to, and redeem such shares from, the Investing Select Funds. The investment by each Investing Select Fund in shares of the Money Market Fund will be made in accordance with that Investing Select Fund's investment policies and restrictions as set forth in its registration statement.

C. Funds of Funds

Each Blended Fund proposes to invest in shares of the Select Funds while also investing a portion of its assets directly in exchange listed equity futures contracts and exchange listed U.S. Treasury futures contracts. Applicants request an exemption pursuant to Section 12(d)(1)(J) of the Act from Section 12(d)(1)(G)(i)(II) of the Act to the extent necessary to permit each of the Blended Funds, which will otherwise operate pursuant to Section 12(d)(1)(G) of the Act, to make such direct investments. These direct investments will not include shares of any investment companies.

D. Transactions Involving Funds With Multiple Subadvisers

1. With the exception of two Select Funds, each of the Select Funds will have more than one Subadviser. Each Subadviser will exercise discretion to purchase and sell securities for a discrete portion of a Select Fund's assets (each portion, a ''Segment'') in accordance with the Select Fund's objectives, policies and restrictions. Each Subadviser is paid directly by the Select Fund it advises, based on a percentage of the value of the Select Fund's assets allocated to its management. The Adviser also may directly advise a Segment of a Select Fund.

2. Applicants request an exemption to permit: (a) Any broker-dealer registered under the Securities Exchange Act of 1934 (the ''1934 Act'') that itself serves as Subadviser (either directly or through a separate operation division) (''Affiliated Subadviser'') or is an affiliated person of a Subadviser to a Segment of a Select Fund (''Affiliated Broker-Dealer'') to engage in principal transactions with a Segment of the Select Fund that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or the Affiliated Subadviser (an ''Unaffiliated Subadviser'') (each such Segment, an ''Unaffiliated Segment'');[2] (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Segment, and the Unaffiliated Segment to utilize such brokerage services, without complying with rule 17e–1(b) and (c) under the Act; (c) an Unaffiliated Segment to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or a person of which an Affiliated Subadviser is an affiliated person (an ''Affiliated Underwriter''); (d) a Segment advised by an Affiliated Subadviser (''Affiliated Segment'') to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment, and (e) an Unaffiliated Segment to purchase securities issued by an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser engaged in securities-related activities (''Securities Affiliate''), within the limits of rule 12d3–1 under the Act.

E. The Transfer

Applicants request an exemption, pursuant to section 17(b) of the Act, from section 17(a) to permit the following proposed transactions constituting the Transfer: (a) Each BIP will transfer its assets to a corresponding Select Fund in exchange for shares of the Select Fund and then distribute the Select Fund shares, pro rata, to its shareholders; and (b) each BIF will transfer its assets to a corresponding Blended Fund in exchange for shares of the Blended Funds and then distribute shares of the Blended Funds pro rata to its shareholders.

Applicants' Legal Analysis

A. Investment of Cash Reserves by the Investing Select Funds in the Money Market Fund

1. Section 12(d)(1) of the Act

a. Section 12(d)(1)(A) of the Act provides that a registered investment company may not acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's outstanding voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

b. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any persons or transactions from any provision of section 12(d)(1) to the extent that the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) of the Act to permit the Investing Select Funds to purchase shares of the Money Market Fund in excess of the limits of section 12(d)(1)(A) and the Money Market Fund to sell its shares to the Investing Select Funds in excess of the limits of section 12(d)(1)(B).

c. Applicants maintain that the proposed transactions will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to address. Applicants state that the Money Market Fund will be managed specifically to maintain a highly liquid portfolio, and access to it will enhance each Investing Select Fund's ability to manage Cash Reserves. Applicants state that there will not be an inappropriate layering of fees because shares of the Money Market Fund sold to or redeemed by the Investing Select Funds will not be subject to a sales load, redemption fee, distribution fee adopted in accordance with rule 12b–1 under the Act, or a service fee. Applicants state that if the Money Market Fund shares were subject to such fees, the Adviser will waive its advisory fee for each Investing Select Fund in an amount that offsets the amount of the fees. In addition, in connection with approving an investment advisory contract under section 15 of the Act, the Board of the Investing Select Fund will consider to what extent the advisory fee paid by the Investing Select Fund to the Adviser should be reduced as a result of the Cash Reserves being invested in the Money Market Fund. Each Investing Select Fund also will invest Cash Reserves in the Money Market Fund only to the extent that the Investing Select Fund's aggregate investment of Cash Reserves in the Money Market Fund does not exceed 25% of the Investing Select Fund's total assets. Applicants also state that the Money

[2] The terms ''Unaffiliated Subadviser,'' ''Subadviser,'' and ''Unaffiliated Segment'' include the Adviser and the Segment of a Select Fund directly advised by the Adviser, respectively, provided that the Adviser manages its Segment of the Select Fund independently of the Segments managed by the other Subadvisers to the Select Fund, and the Adviser does not control or influence any other Subadviser's investment decisions for its Segment of the Select Fund. The Adviser does not currently manage any Select Fund.

Market Fund will not acquire securities of any investment company in excess of the limits of section 12(d)(1)(A) of the Act.

2. Section 17(a) of the Act

a. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or an affiliated person of the affiliated person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; any person directly or indirectly controlling, controlled by, or under common control with the other person; and, in the case of an investment company, its investment adviser.

b. Because the Adviser will serve as each Select Fund's investment adviser, the Funds may be deemed to be under common control and therefore affiliated persons, or affiliated persons of an affiliated person, of each other. In addition, the Funds could be deemed to be under common control by virtue of the fact that they share a common Board. In addition, if an Investing Select Fund purchases more than 5% of the outstanding voting securities of the Money Market Fund, the Investing Select Fund and Money Market Fund would be affiliated persons of each other. Accordingly, applicants state that the sale and redemption of shares of the Money Market Fund by the Investing Select Fund may be prohibited by section 17(a).

c. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act 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, and the proposed transaction is consistent with the policy of each investment company concerned and the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions, from the provisions of the Act to the extent that such exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

d. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Investing Select Funds to purchase and redeem shares of the Money Market Fund. Applicants state that the proposed transactions satisfy the standards of sections 6(c) and 17(b) of the Act. Applicants state that the consideration paid and received on the sale and redemption of shares of the Money Market Fund will be based on the current net asset value per share of the Money Market Fund. Applicants also state that the Investing Select Funds will retain their ability to invest their Cash Reserves directly in money market instruments and other short-term instruments if they can obtain a higher rate of return or for any other reason. The Money Market Fund also reserves the right to discontinue selling shares to any of the Investing Select Funds if the Board determines that the sales would adversely affect the Money Market Fund's management and operations. In addition, applicants state that the investment of Cash Reserves of the Investing Select Funds in shares of the Money Market Fund will be effected in accordance with each Investing Select Fund's investment restrictions and will be consistent with each Investing Select Fund's policies as set forth in its registration statement.

3. Section 17(d) of the Act and Rule 17d–1 under the Act

a. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission has approved the joint arrangement by an order. Applicants state that each Investing Select Fund and the Money Market Fund, by participating in the proposed transactions, and the Adviser, by effecting the proposed transactions, could be deemed to be participants in a joint enterprise for the purposes of section 17(d) of the Act and rule 17d–1 under the Act.

b. In passing on applications for orders under section 17(d), rule 17d–1 requires that the Commission consider whether an investment company's participation in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants state that the proposed transactions meet the standards for an order under rule 17d–1. Applicants state that the investment by the Investing Select Funds of Cash Reserves in shares of the Money Market Fund would be on the same basis and would be indistinguishable from any other shareholder account maintained by the Money Market Fund. The proposed transactions will provide the potential for increased returns and reduced costs and reduced risks for the Investing Select Funds and their shareholders and are consistent with the policies and purposes of the Act.

B. Investment by the Blended Funds in the Select Funds

1. Section 12(d)(1)(G) of the Act provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company acquired by a registered open-end investment company if: (i) The acquiring company and the acquired company are part of the same group of investment companies, (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the 1934 Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies in reliance on section 12(d)(1)(F) or (G). Applicants state that the proposed investment by the Blended Funds in the Select Funds would comply with the provisions of section 12(d)(1)(G), but for the fact that each Blended Fund's policies contemplate that it may invest a portion of its assets directly in securities other than those specified in section 12(d)(1)(G)(i)(II).

2. Applicants request an exemption under section 12(d)(1)(J) of the Act from section 12(d)(1)(G)(i)(II). Applicants assert that permitting the Blended Funds to invest directly in securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G)(i)(II) were designed to address.

C. Transactions Involving Funds With Multiple Subadvisers

1. Principal Transactions Between an Unaffiliated Segment and an Affiliated Broker-Dealer

a. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated

person of an affiliated person, promoter, or principal underwriter. Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants assert that an Affiliated Subadviser would be an affiliated person of a Select Fund, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser, and thus an affiliated person of an affiliated person (''second-tier affiliate'') of a Select Fund, including the Unaffiliated Segment. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Segment of a Select Fund with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

b. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment of a Select Fund solely because an Affiliated Subadviser is the Subadviser to another Segment of the Select Fund. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of the Adviser, principal underwriter or promoter of the Trust, the Unaffiliated Subadviser making the investment decision or any officer, director or employee of the Select Fund.

c. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an Unaffiliated Segment in principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the value of the assets of the Segment allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Segment would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated segment.

d. Applicants state that each Subadviser's contract assigns it responsibility to manage a Segment of the Select Fund and that each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants represent that the Adviser does not dictate brokerage allocation or investment decisions to any Select Fund advised by a Subadviser, or have the contractual right to do so, except with respect to a Segment advised directly by the Adviser. Applicants contend that, in managing a discrete Segment of a Select Fund, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

e. Applicants state that the proposed transactions will be consistent with the policies of the Select Fund involved, since each Unaffiliated Subadviser is required to manage the Unaffiliated Segment in accordance with the investment objectives and related investment policies of the Select Fund as described in its registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Select fund achieving best price and execution on its principal transactions, while giving rise to none of the abuses that the Act was designed to prevent.

Payment of Brokerage Compensation by an Unaffiliated Segment to an Affiliated Broker-Dealer

a. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the ''usual and customary broker's commission'' for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

b. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another segment of a Select Fund) or a second-tier affiliate of an Unaffiliated Segment and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17(e) and rule 17e–1 to the extent necessary to permit an Unaffiliated Segment to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Segment, without complying with the requirements of rule 17e–1 (b) and (c). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment solely because an Affiliated Subadviser is the Subadviser to another Segment of the same Select Fund. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of serving as Subadviser) is an affiliated person or a second-tier affiliate of the Adviser, principal underwriter or promoter of the Trust, the Unaffiliated Subadviser to the Unaffiliated Segment of the Select Fund, or any officer, director or employee of the Select Fund.

c. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants state that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Segment it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair, as required by rule 17e–1(a) under the Act. Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Segment.

3. Purchases of Securities from Offerings with an Affiliated Underwriter

a. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a

security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of those persons. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

b. Applicants state that each Subadviser to a Select Fund, although under contract to manage only a distinct Segment of the Select Fund, is considered an investment adviser to the entire Select Fund. As a result, applicants, state that all purchases of securities by an Unaffiliated Segment from an underwriting syndicate a principal underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

c. Applicants request relief under section 10(f) from section 10(f) to permit an Unaffiliated Segment to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Select Fund. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Subadviser) is an affiliated person or a second-tier affiliate of the Adviser, principal underwriter or promoter of the Trust, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Segment of the Select Fund, or any officer, director, or employee of the Select Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Segment to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment.

d. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Select Funds because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for ''dumping.'' In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers to the same Select Fund, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

4. Purchases of Securities Issued by a Securities Affiliate

a. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, ''securities-related activities''). Applicants assert that because a Securities Affiliate is engaged in securities-related activities, an Unaffiliated Segment of a Select Fund advised by an Unaffiliated Subadviser would be prohibited by section 12(d)(3) from purchasing the securities issued by the Securities Affiliate.

b. Rule 12d3–1 under the Act exempts from the prohibition of section 12(d)(3) purchases of securities of an issuer engaged in securities-related activities if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), prohibits the acquisition of a security issued by the investment company's investment adviser, promoter, or principal underwriter, or any affiliated person of the investment adviser, promoter, or principal underwriter.

c. Applicants state that each Subadviser to a Segment is considered to be an investment adviser to the entire Select Fund. Thus, applicants state that a purchase by an Unaffiliated Segment of securities issued by a Securities Affiliate would not meet rule 12d3–1(c) and that applicants are therefore unable to rely on the rule.

d. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit an Unaffiliated Segment to purchase securities issued by a Securities Affiliate, provided that all of the requirements of rule 12d3–1, except rule 12d3–1(c), are met. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Segment. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment and brokerage allocation decisions for the assets allocated to its Segment and that Unaffiliated Subadvisers have no economic incentive to purchase shares of a Securities Affiliate other than to increase the value of the Unaffiliated Segment or Select Fund for the benefit its shareholders. Applicants state that the requested relief would not extend to securities issued by the Subadviser making the purchase, the Adviser, a principal underwriter or promoter of the Trust or to any affiliated person of these entities. Applicants assert that prohibiting an Unaffiliated Segment of a Select Fund from purchasing securities issued by a Securities Affiliate may cause Unaffiliated Subadvisers to forego investment opportunities that would be in the best interests of the Funds' shareholders.

D. The Transfer

1. Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly (a) to sell any security or other property to such registered investment company, or (b) to purchase from such registered investment company any security or other property. Section 2(a)(3) of the Act defines the term ''affiliated person'' of another person to include (a) any person owing, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person controlling, controlled by, or under common control with, any investment adviser thereof.

2. Because the BIPs might be viewed as acting as principal in the Transfer, and because the BIPs and the Funds might be viewed as being under common control of the Annuity Board within the meaning of section 2(a)(3) of the Act, the Transfer may be subject to the prohibitions of section 17(a).

3. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirement, that the transaction

involves a cash payment against prompt delivery of the security. The relief provided by rule 17a–7 may not be available for the Transfer because the ownership of 5% or more of the outstanding voting shares of the Funds by the Annuity Board may create an affiliation ''not solely by reason of'' having a common investment adviser, common directors, and/or common officers. In addition, the Transfer will be effected on a basis other than cash.

4. Rule 17a–8 exempts mergers, consolidations, and assets sales of registered investment companies from the provisions of section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the board of directors of each affiliated investment company make certain determinations that the transactions are fair. The relief provided by rule 17a–8 may not be available for the Transfer because the BIPs are not registered investment companies. In addition, the relief provided by rule 17a–8 may not be available for the Transfer because the ownership of 5% or more of the outstanding voting shares of the Funds by the Annuity Board may create an affiliation ''not solely by reason of'' having a common investment adviser, common directors, and/or common officers.

5. Applicants seek an order under section 17(b) to allow the Transfer. Applicants submit that the Transfer satisfies the standard for relief under section 17(b). Applicants state that the Transfer will comply with rule 17a–7(b) through (f) and any applicable no-action letters.

6. The Transfer is designed to provide the current BIP and BIF participants substantially the same assets and investment vehicles currently available to them, but in a registered investment company structure. Applicants state that the assets of the BIPs to be transferred to the Select Funds will be valued in accordance with the provisions of rule 17a–7(b) under the Act. The BIP corresponding to the Money Market Fund will value its assets in accordance with rule 2a–7 under the Act. The transfer of Select Fund shares by the BIFs to the Blended Funds in exchange for Blended Funds' shares will be made at the net asset value of the Select Funds' and Blended Funds' shares determined in accordance with the Act. The transactions will occur simultaneously and will involve no brokerage commissions, fees or other expenses, other than customary transfer fees.

7. Applicants state that the Transfer will not occur unless the Board, including a majority of the Trustees who will not be ''interested trustees'' as defined in section 2(a)(19) of the Act (the ''Disinterested Trustees''), has determined that participation by the Funds in the Transfer is in the best interests of each Fund and its shareholders and that the interests of existing shareholders of the Funds will not be diluted as a result of the Transfer.

Applicants' Conditions

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

A. Investment of Cash Reserves in the Money Market Fund

1. Investment in shares of the Money Market Fund will be in accordance with each Investing Select Fund's policies as set forth in its prospectus and statement of additional information.

2. The shares of the Money Market Fund sold to and redeemed from the Investing Select Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc. or if such shares are subject to any such fee, the Adviser will waive its advisory fee for each Investing Select Fund in an amount that offsets the amount of such fees incurred by the Investing Select Fund.

3. Prior to reliance on the requested order by any Investing Select Fund, the Board will hold a meeting for the purpose of voting on the Advisory Agreement. Before approving the advisory contract, the Board, including a majority of the Disinterested Trustees, will consider to what extent, if any, the advisory fees charged to an Investing Select Fund by the Adviser should be reduced to account for the reduced services provided to the Investing Select Fund by the Adviser as a result of Cash Reserves being invested in the Money Market Fund. The Adviser will provide the Board with specific information regarding the approximate cost to the Adviser for, or portion of the advisory fee under the existing advisory fee attributable to, managing the Cash Reserves of the Investing Select Fund that can be expected to be invested in the Money Market Fund. The minute books of the Investing Select Fund will fully record the Board's consideration in approving the advisory contract, including the fees referred to above.

4. Each Investing Select Fund will invest Cash Reserves in, and hold shares of, the Money Market Fund only to the extent that the Investing Select Fund's aggregate investment of Cash Reserves in the Money Market Fund does not exceed 25% of the Investing Select Fund's total assets. For purposes of this limitation, each Investing Select Fund will be treated as a separate investment company.

5. Each Investing Select Fund, the Money Market Fund, and any future registered open-end investment company that may rely on the order, will be part of the same group of investment companies as defined in section 12(d)(1)(G)(ii) of the Act and will be advised by the Adviser, or a person controlling, controlled by, or under common control with the Adviser.

6. The Money Market Fund will not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

B. The Blended Funds

1. Before approving any advisory contract under section 15 of the Act, the Board, including a majority of the Disinterested Trustees, will find that advisory fees, if any, charged under the contract with a Blended Fund are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any underlying Select Fund's advisory contract. This finding, and the basis upon which it was made, will be recorded fully in the minute books of the Blended Funds.

2. Applicants will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts a Blended Fund from investing directly in securities as described in the application.

C. Transactions Involving Funds With Multiple Subadvisers

1. Each Fund relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Affiliated Underwriter of Securities Affiliate (except by virtue of serving as Subadviser to a Segment of a Fund) will be an affiliated person or a second-tier affiliate of the Adviser, any Unaffiliated Subadviser, any principal underwriter or promoter of a Select Fund, or any officer, director, or employee of a Select Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadvisers concerning allocation of principal or brokerage transactions or concerning the purchase

of securities issued by Securities Affiliates. Subadvisers may consult with the Adviser in order to monitor regulatory compliance, including compliance with the limits of rule 12d3–1.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Segment of a Select Fund during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 under the Act will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Segment of the Select Fund with purchases by an Unaffiliated Segment.

6. Each Select Fund will comply with rule 12d3–1, except paragraph (c) of that rule solely with respect to purchases by an Unaffiliated Segment of a Select Fund of securities issued by a Securities Affiliate that would be prohibited by rule 12d3–1 solely because the Securities Affiliates is an Affiliated Subadviser, or an affiliated person of an Affiliated Subadviser to an Affiliated Segment of the Select Fund.

D. The Transfer

1. The Transfer will comply with rule 17a–7(b) through (f) and any relevant Commission staff no-action positions.

2. The Transfer will not occur unless and until the Board, including a majority of the Disinterested Trustees, finds that participation by each Select Fund and each Blended Fund in the Transfer is in the best interest of each Select Fund and each Blended Fund and their shareholders and that the interests of any existing shareholders of each Select Fund and each Blended Fund will not be diluted as a result of the Transfer. These findings, and the basis upon which they are made, will be recorded in the minute books of the Trust.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44392; File No. SR–CHX–2001–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Amending Its Membership Dues and Fees Schedule

June 6, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 CHX proposes to amend its membership dues and fees schedule (the ''Schedule''), effective June 1, 2001, to begin rebilling member firms for execution quality reports prepared by third parties pursuant to Rule 11 Ac1–5 [3] (the ''Rule'') under the Act and to increase the earned credits available through the specialist credit program. Below is the text of the proposed rule change; proposed additions are italicized and proposed deletions are [bracketed].

* * * * *

MEMBERSHIP DUES AND FEES

* * * * *

H. Equipment, Information Services and Technology Charges

* * * * *

Execution quality reports prepared by third parties

Rebilled at cost.

* * * * *

M. Credits

1. Specialist Credits

Total monthly fees owed by a specialist to the Exchange will be reduced (*and specialists will be paid each month for any unused credits* [but to no less than zero]) by the application of the following credits:

* * * * *

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 CHX 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 CHX 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 proposed rule change amends the Schedule in two ways. First, the proposal would assess a new fee that reimburses the Exchange for its cost in procuring execution quality reports pursuant to the Rule [4] that are prepared by third parties. The Exchange currently is compiling and making public, at no cost to its member firms, the data required by the Rule. From time to time, however, the Exchange contracts with third parties to provide separate execution quality reports for its member firms. Through this proposal, the Exchange proposes to pass the cost of these reports on to the members that receive them.

Second, the proposed rule change would revise the specialist credit program to provide that the Exchange will pay specialists for any unused credits that they earn each month. The CHX represents that this credit program is designed to stimulate growth on the Exchange, exchange the competitive capability of specialist firms, and foster cooperation on the Exchange's trading floor by rewarding specialists for their work to increase Exchange revenue.

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.11 Ac1–5.

[4] Generally, the Rule seeks to improve the ability of public investors to evaluate how their orders are handled after being submitted to a broker-dealer for execution. The Rule requires market centers that trade national market system securities to prepare and make publicly available standardized, monthly reports containing statistical information concerning the handling and execution of their covered orders. To facilitate cross-market comparisons, the Rule established and defines uniform measures to execution quality, including effective spread, rate of price improvement and disimprovement, fill rate, and execution speed.