In order to monitor compliance with their scope of business requirements, GSCC's rules currently require each category 2 IDB to provide GSCC in writing with a list of all of the legal entities that it acts on behalf of and promptly inform GSCC of any change to such list. Each category 2 IDB also is required to submit to GSCC on each business day all of its next day and forward settling trades in eligible netting securities, including trades with non-grandfathered non-members, and must indicate the buy and sell side of each transaction.

GSCC's rules do not, however, expressly require that a category 2 IDB provide to GSCC for every trade done involving an eligible netting security the identity of each buy side and sell side counterparty. The proposed rule change expressly requires each category 2 IDB to disclose to GSCC the identity of each buy side and sell side counterparty for every trade done, including trades done with non-members, involving an eligible netting security.[5]

II. Discussion

The Commission believes that GSCC's proposed rule change is consistent with Section 17A of the Act,[6] and in particular, Sections 17A(b)(3) (A) and (F) of the Act.[7] Sections 17A(b)(3) (A) and (F) require, among other things, that a clearing agency and its rules be designed to safeguard the securities and funds in its rules be designed to safeguard the securities and funds in its possession or control or for which it is responsible. The Commission believes that GSCC's proposal to modify the trade reporting requirements for category 2 IDBs is consistent with this obligation.

According to GSCC, requiring category 2 IDBs to provide the identity of each buy side and sell side counterparty for every trade done involving an eligible netting security is significant for risk monitoring and surveillance purposes. The Commission agrees with GSCC and believes that the proposal helps GSCC ensure that it can appropriately monitor its existing netting members. By requiring each category 2 IDB to disclose the identity of each buy side and sell side counterparty, GSCC will be better able to understand and assess the volume of and degree of concentration of trading done by a category 2 IDB with one or more specific non-members. This, in turn, should help GSCC fulfill its safeguarding obligations.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with Section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–GSCC–94–06) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–25729 Filed 10–17–94; 8:45 am]

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[5] Although the identity of each buy side and sell side counterparty is known for trades done by category 1 IDBs, there is no obligation in GSCC's rules imposing this disclosure requirement. The proposed rule change therefore formalizes and expressly sets forth this reporting obligation for category 1 IDBs.

[6] 15 U.S.C. 78q–1 (1988).

[7] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12).

[Release No. 34–34825; File No. SR–NSCC–94–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving A Proposed Rule Change Modifying Rules and Procedures Relating to Compared Trade Summaries

October 12, 1994.

On August 2, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–94–15) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published on September 1, 1994, in the **Federal Register** to solicit comments on the proposed rule change.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change is to facilitate NSCC's distribution each day of a Consolidated Trade Summary that reports both Continuous Net Settlement ("CNS") and Non-CNS trades due for settlement the next day. NSCC will continue to distribute each day its current CNS and non-CNS Compared Trade Summaries which also report, in greater detail, the trades due to settle the next day. After ninety days or more, NSCC intends to eliminate the CNS and non-CNS Compared Trade Summaries and distribute only the Consolidated Trade Summary.[3]

On both the CNS and Non-CNS Compared Trade Summary, each transaction appears at the original contract price, and quantities and money are totalled and netted for each security issue. The contract output provided to member on T+1 contains much of the trade detail given on the CNS and Non-CNS Compared Trade Summaries.[4] In contrast, the Consolidated Trade Summary reports only the net positions due for settlement on the following day. Each position, in CUSIP order, is reported as broad buys and sells by marketplace or source, netted by issue, quantity, and money. The Consolidated Trade Summary eliminates trade details, such as the contra-broker, price, and trade date, which are currently included on the CNS and Non-CNS Compared Trade Summaries and which already have been provided to members through the contract output NSCC provides.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[5] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Introduction of the Consolidated Trade Summary aids NSCC in its effort to move towards three business by settlement ("T+3") and is consistent with Rule 15c6–1 under the Act.[6] Currently, NSCC's Rules require that the CNS and Non-CNS Compared Trade Summaries be issued on the morning of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 34595 (August 25, 1994), 59 FR 45321.

[3] NSCC Plans to begin distribution of the Consolidated Trade Summary on September 20, 1994. NSCC will not eliminate the CNS and Non-CNS Compared Trade Summaries in connection with the Reconfirmation and Pricing Service ("RECAPS"). RECAPS is a fail clearance system that provides an opportunity to reconfirm and reprice transactions that already have been compared. NSCC's Procedure II (G).

[4] Prime broker transactions do not have contract output. Instead, the details of these transactions are reported on the Regional Interface Operation ("RIO") Blotter.

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[6] On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act, which establishes three business days after the trade date ("T+3") instead of five business days ("T+5") as the standard settlement timeframe for most broker-dealer transactions. The rule becomes effective June 1, 1995. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

T+4. When the settlement cycle is reduced to T+3, it will be necessary to issue trade reports earlier. In anticipation of the move to T+3, the proposal requires that the Consolidated Trade Summary be issued on the day before settlement.

When the settlement cycle is reduced, NSCC will issue the trade summaries on T+2, which is the day after NSCC issues the contract output to members. To repeat the trade details reported on the contract output in the Consolidated Trade Summary, as is currently done in the CNS and non-CNS Compared Trade Summaries would duplicate unnecessarily the information provided only the day before. By eliminating information for each individual trade, the Consolidated Trade Summary will provide a more concise statement. The Commission believes that NSCC's rule change reducing the redundant information contained in the trade summaries to include only information on net positions due for settlement on the following day should result in benefits to both customers and members by increasing efficiency and reducing costs.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and particularly with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-94-15) be and hereby is approves.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-27530 Filed 10-17-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20613; File No. 812-8382]

Pacific Select Fund, et al.

October 12, 1994.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Pacific Select Fund ("Select Fund") and Pacific Corinthian Variable Fund ("Variable Fund"), referred to collectively as the "Applicants."

RELEVANT 1940 ACT SECTIONS: Order requested under Section 17(b) of the 1940 Act for exemption from Section 17(a) thereof.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the assets of Variable Fund to be transferred to and combined with the assets of Select Fund in exchange for shares of Select Fund. (The transfer and combination of assets in exchange for such shares is referred to herein as the "Reorganization.")

FILING DATES: The original application was filed on May 4, 1993. An amended and restated application was filed on July 8, 1994.

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 the 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 6, 1994, 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 may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Sharon A Cheever, Esq., Pacific Mutual Life Insurance Company, 700 Newport Center Drive, Newport Beach, CA 92660.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, Division of Investment Management, Office of Insurance Products, at (202) 942-0679.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Select Fund is a diversified, open-end management investment company, organized under the laws of the Commonwealth of Massachusetts.

2. Select Fund consists of ten investment series: (i) The Money Market Series; (ii) The Managed Bond Series; (iii) The Government Securities Series; (iv) The High Yield Bond Series; (v) The Growth Series; (vi) The Growth LT Series; (vii) The Equity Income Series; (viii) The Multi-Strategy Series; (ix) The Equity Index Series; and (x) The International Series. It is presently contemplated that two new series of Select Fund—the Equity Series and the Bond and Income Series—will be organized. Shares of each series of Select Fund are currently offered only for purchase by separate accounts of Pacific Mutual Life Insurance Company ("Pacific Mutual") to serve as an investment medium for annuity contracts and for variable life insurance policies issued by Pacific Mutual. Pacific Mutual serves as investment adviser to each series of Select Fund. Pacific Mutual and three of its separate accounts (the "Pacific Select Separate Accounts") currently own all of the outstanding shares of Select Fund.

3. Pacific Mutual and the Insurance Commissioner of the State of California, as conservator of First Capital Life Insurance Company—In Conservation ("First Capital"), entered into an agreement regarding the rehabilitation of First Capital (the "Rehabilitation Plan"). In connection with the Rehabilitation Plan, Pacific Mutual established a wholly-owned subsidiary, Pacific Corinthian Life Insurance Company ("Pacific Corinthian"), as a stock life insurance company incorporated under the laws of the State of California.

4. As part of the Rehabilitation Plan, Pacific Corinthian assumed, among other things, the life insurance policies and annuity contracts issued by First Capital, including certain flexible premium deferred annuity and variable accumulation contracts (the "Variable Contracts") for which the Variable Fund serves as investment medium. Also pursuant to the Rehabilitation Plan, the assets of a separate account of First Capital that had funded the variable accumulation option under the Variable Contracts were transferred intact to a separate account designated as the Pacific Corinthian Variable Separate Account.

5. The Pacific Corinthian Variable Separate Account funds individual flexible premium deferred annuity and variable accumulation contracts, formerly offered by First Capital, which were assumed by Pacific Corinthian pursuant to the Rehabilitation Plan. The Pacific Corinthian Variable Separate Account invests exclusively in Variable Fund; each of the eight subaccounts of the Pacific Corinthian Variable Separate Account invests in a distinct series of Variable Fund. Pacific Corinthian Variable Separate Account owns all of the outstanding shares of Variable Fund.

6. Variable Fund—formerly, Shearson VIP Fund—is incorporated under the laws of the State of California. Variable Fund consists of eight series: (i) The Money Market Series: (ii) The Equity

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[7] 17 CFR 200.30-3(a)(12) (1994).

Series; (iii) The Bond and Income Series; (iv) The Government Securities Series; (v) The Directions Value Series; (vi) The Equity Income Series; (vii) The Diversified Low P/E Series; and (viii) The Balanced Series. Pacific Mutual currently serves as investment adviser to each series of Variable Fund.

7. Pacific Mutual and the Pacific Select Separate Accounts currently own 100 percent of the outstanding shares of Select Fund. Pacific Mutual also owns 100 Percent of the outstanding shares of Pacific Corinthian. Pacific Corinthian is the depositor of the Pacific Corinthian Variable Separate Account, the sole shareholder of Variable Fund. As a result of these relationships, Select Fund and Variable Fund may be deemed to be under the common control of Pacific Mutual. In addition, the Applicants may be deemed to be affiliates of an affiliated person (*i.e.*, Pacific Mutual).

8. Under the Reorganization, Variable Fund will convey, transfer, and deliver to Select Fund all of the existing assets of each series of Variable Fund. In consideration thereof, Select Fund will agree: (i) To assume and pay certain liabilities of Variable Funds; and (ii) to deliver to Variable Fund full and fractional share of beneficial interest of Select Fund having an aggregate net asset value equal to the aggregate value of the net assets of the Variable Fund series exchanged therefor.

9. The Reorganization will be performed in such a manner that the assets and certain liabilities of The Money Market Series of Variable Fund become the assets and liabilities of The Money Market Series of Select Fund; the assets and certain liabilities of The Equity Series of Variable Fund become those of the proposed Equity Series of Select Fund; the assets and certain liabilities of The Bond and Income Series of Variable Fund become the assets and liabilities of the proposed Bond and Income Series of Select Fund; the assets and certain liabilities of The Government Securities Series of Variable Fund become the assets and liabilities of The Government Securities Series of Select Fund; the assets and certain liabilities of The Directions Value Series, The Diversified Low P/E Series, and The Equity Income Series of Variable Fund become the assets and liabilities of The Equity Income Series of Select Fund; and the assets and certain liabilities of The Balanced Series of Variable Fund become the assets and liabilities of The Multi-Strategy Series of Select Fund.

10. The rate of exchange will be determined based on the relative net asset value per share of each Variable Fund series compared to the net asset value of the corresponding Select Fund series as of the close of business on the day immediately proceeding the effective date of the proposed Reorganization. For the recently created Select Fund series (*i.e.*, the Bond and Income Series and the Equity Series), the net asset value per share will be established as an amount equal to the net asset value per share for the Variable Fund Bond and Income Series and Equity Series as of the close of business on the business day immediately preceding the effective date of the Reorganization. Thus, the rate of exchange will be on a one-to-one basis. However, it is possible that the proposed Equity Series and Bond and Income Series of the Select Fund may offer their shares to the public prior to the effective date of the Reorganization, in which case the rate of exchange for these series will be determined in the manner described above for the currently operational series of Select Fund.

11. Immediately after the Reorganization, the value of each Variable Contract will be equal to the value of each such Contract immediately before the Reorganization. Applicants represent that, apart from the fact that the future each value of Variable Contracts issued through the Pacific Corinthian Variable Separate Account will reflect the investment performance of a series of the Select Fund instead of a series of the Variable Fund, the Reorganization will have no material economic impact on Variable Contract values.

12. On the effective date of the Reorganization, Variable Fund will close its stock transfer books permanently and distribute pro rata to its shareholders the Select Fund shares it received pursuant to the Reorganization. Thereafter, the Variable Fund will be completely liquidated. Such liquidation and distribution will be accompanied by the establishment of an open account on the share records of Select Fund in the name of each shareholder of Variable Fund representing the respective pro rata number of Select Fund shares due that shareholder, designated by series. Select Fund will register the shares of each of its series issued pursuant to the Reorganization under the Securities Act of 1933, using the Form N–14.

13. Pacific Mutual, Select Fund, and Variable Fund will pay all of the costs of the Reorganization. Variable Fund and Select Fund shall bear any such expenses only to the extent that the board of director/trustees of each fund, including a majority of the independent directors/trustees, determines that for the Fund to bear such expenses is in the best interests of its respective shareholders.[1] Applicants represent that in no event will Select Fund and Variable Fund, in the aggregate, bear more than two-thirds of the total expenses of the Reorganization. The Applicants do not expect that the Reorganization will entail any significant liquidation expenses because the corresponding series of Variable Fund and Select Fund will have substantially identical investment policies.

14. A plan that sets forth the terms and conditions necessary to implement the Reorganization (the "Reorganization Plan") will be submitted to the board of directors of Variable Fund and the board of trustees of Select Fund. In deciding to approve the terms of the Reorganization and recommend approval of such Reorganization to shareholders of each Fund, the directors of Variable Fund and the trustees of Select Fund (including the disinterested directors and trustees) have made an inquiry into a number of matters and consider the following factors, among others: (i) The reasonableness of advisory fees paid to Pacific Mutual following the Reorganization; (ii) expense rations and published information regarding Variable Fund and Select Fund; (iii) the comparative investment performance of each series of Variable Fund and each series of Select Fund; (iv) the terms and conditions of the Reorganization, and whether the Reorganization will result in dilution of shareholder or Variable Contract owner interests; (v) the advantages of obtaining economies of scale, increased investment flexibility, and expanded allocation options resulting from acceptance of new premiums through the Reorganization; (vi) the compatibility of the investment objectives, policies and restrictions, and service features available to shareholders of each series of Variable Fund compared to the corresponding series of Select Fund; (vii) the costs to be incurred by Variable Fund and Select Fund as a result of the Reorganization; (viii) tax consequences of the Reorganization; and (ix) the potential for overreaching on the part of either Applicant or any affiliate thereof.

15. The Reorganization Plan will be submitted to shareholders of both the Variable Fund and the Select Fund for approval at a special meeting called for

[1] Applicants represent that no series of the Variable Fund or the Select Fund will bear any expenses of the Reorganization to the extent that the impact of such expense on the net asset value per share of a series equals of exceeds $0.01 per share.

that purpose. A majority of all votes of each operating series of Variable Fund and Select Fund entitled to be cast will be required to approve the Reorganization Plan and the Reorganization; the Reorganization Plan may be effected with respect to any Variable Fund or Select Fund series whose shareholders approve it. Variable Fund and Select Fund each will furnish to its respective shareholders a proxy statement/prospectus containing information relating to the Reorganization Plan and the Reorganization.

16. Pacific Corinthian will vote shares of each series of the Variable Fund, and Pacific Mutual will vote shares of each series held by it and each Pacific Separate Account, in accordance with instructions received from Variable Contract owners and owners of annuity contracts and variable life insurance policies issued by Pacific Mutual, respectively. Shares for which no voting instructions are received will be voted by Pacific Corinthian or Pacific Mutual, as appropriate, in the same proportion as it votes shares for which voting instructions were received.

17. In addition to shareholder approval, Applicants further condition the consummation of the Reorganization upon receipt from the Commission of the exemptive order requested herein, receipt of any necessary approval from the applicable state insurance commissions, and receipt by Select Fund and/or Variable Fund of a private letter ruling from the Internal Revenue Service or an opinion of tax counsel to the effect that the Reorganization will qualify as a tax-free reorganization under the Internal Revenue Code of 1986, as amended, and will not result in the recognition of any taxable gain or loss to any series of Select Fund or Variable Fund, or to any shareholders thereof.

Applicants' Legal Analysis

1. Under Section 2(a)(3) of the 1940 Act, one person is an "affiliated person" of another person if, among other things: The person directly or indirectly owns, controls, or holds with power to vote 5% or more of the other person's outstanding voting securities; 5% or more of the person's outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; or the person directly or indirectly controls, is controlled by, or is under common control with the other person.

2. Applicants may be deemed "affiliated persons" of one another within the meaning of Section 2(a)(3) of the 1940 Act as a result of their relationships to Pacific Mutual. Because of these relationships, the Reorganization may be deemed to violate Section 17(a) of the 1940 Act, which, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from knowingly selling to or purchasing from such investment company any security or other property.

3. Section 17(b) of the 1940 Act authorizes the SEC to exempt any transaction from the provisions of Section 17(a) if: the terms of the 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; the transaction is consistent with the policy of each registered investment company concerned; and the transaction is consistent with the general purposes of the 1940 Act.

4. Applicants request an order of the Commission pursuant to Section 17(b) of the 1940 Act exempting the Reorganization from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit the various series of Select Fund to acquire the assets of the corresponding series of Variable Fund in exchange for shares of the Select Fund series.[2]

A. Reasonableness, Fairness, and the Absence of Overreaching

1. Applicants assert that the terms of the proposed Reorganization are fair and reasonable and do not involve overreaching on the part of any person concerned.

2. Applicants represent that the Reorganization will not be effected unless: (i) the board of directors of Variable Fund and the board of trustees of Select Fund—including a majority of the disinterested directors/trustees—separately have reviewed and approved the terms of the Reorganization set forth in the Reauthorization Plan, including consideration to be paid or received by all parties to the Reauthorization; and (ii) the board of directors of Variable Fund and the board of trustees of Select Fund independently have determined that the Reorganization will be in the best interests of the shareholders of each Fund's series, and that consummation of the Reorganization will not result in the dilution of the current interests of any shareholder or contract owner of Variable Fund or Select Fund.

3. Applicants note that the number of shares to be issued to Variable Fund by Select Fund will be determined on the basis of the relative net asset value per share of each series proposed to be combined.

4. Applicants represent that neither the board of directors of Variable Fund nor the board of trustees of Select Fund will make a recommendation to shareholders concerning the Reorganization Plan unless it has considered the expense ratios and published information regarding the fees and expenses of corresponding series of the Variable Fund and the Select Fund and those of similar funds, the terms and conditions of the Reorganization Plan, and whether the Reorganization Plan will result in the dilution of any shareholder interests. Applicants assert that no recommendation will be made unless the directors/trustees have considered: (i) The potential benefits of the Reorganization to shareholders of the series of the Variable Fund or the Select Fund, as appropriate, and the contract owners with contract values allocated to the Pacific Corinthian Variable Separate Account or the Pacific Select Separate Accounts, as appropriate; (ii) the compatibility of investment objectives, policies, restrictions, and investment holdings of the corresponding series of Variable Fund and Select Fund; (iii) the terms and conditions of the Reorganization Plan which might affect the price of outstanding shares of each series of Variable Fund or Select Fund, as appropriate, or interests of contract owners indirectly invested therein; and (iv) direct or indirect costs to be incurred by the series of Variable Fund or Select Fund, as appropriate, or shareholders thereof or contract owners who have allocated their variable contracts to separate accounts that invest in Variable Fund or Select Fund series.

5. If effected according to the Reorganization Plan, the Reorganization should result in an increase in the asset size of the Select Fund. Applicants represent that the larger aggregate net assets of Select Fund and certain of its series should enable the combined entity to realize significant benefits associated with economies of scale.

6. Applicants represent that, because Pacific Corinthian no longer accepts new premiums from existing owners of the Variable Contracts and no longer solicits new applications for new Variable Contracts, the Variable Fund faces the potential of limited (or no)

[2] Applicants posit that Congress did not intend Section 26(b) of the 1940 Act to apply to transactions such as the Reorganization and, therefore, have requested neither a Commission order pursuant to Section 26(b) before proceeding with the Reorganziation, nor Commission approval of their decision to proceed with the Reorganization without a Commission order pursuant to Section 26(b).

growth and continued diminution of asset size. Consequently, the expense ratios of certain Variable Fund series may increase, Variable Fund series may experience difficulty in achieving their investment objectives, service providers may find it less profitable to render services to Variable Fund series, and it may become difficult for the Variable Fund series to retain qualified service providers. Applicants assert that the Reorganization will provide an opportunity for the owners of the Variable Contracts to invest in an underlying fund with greater assets that has the potential for growth in assets.

7. Applicants represent that, under the advisory agreement with Select Fund, Pacific Mutual renders the types of advisory and non-advisory services that are substantially similar to the types of advisory services currently rendered to Variable Fund by Pacific Mutual and the management services rendered to Variable Fund by Pacific Corinthian. Applicants anticipate that, after completion of the Reorganization, the investment advisory fees paid by the series of Select Fund involved in the Reorganization will be comparable to the advisory fees and management fees paid by the corresponding series of Variable Fund.

8. Applicants represent that, generally, the expense ratios for Select Fund are lower than those of the corresponding series of Variable Fund, and the Reorganization should result in a benefit to contract owners in that the investment-related expenses that bear indirectly are likely to decrease.

9. Applicants represent that the Reorganization will not be effected until the board of directors of Variable Fund: (i) Has considered and compared the relative investment performance of each series of Variable Fund and all series of Select Fund and, in the case of pertinent series of Select Fund for which new portfolios managers are proposed, investment performance for comparable portfolios managed by such proposed portfolio managers; and (ii) determines whether performance and investment flexibility may be enhanced if assets of Variable Fund series are combined with assets of Select Fund series in accordance with the Reorganization Plan.

10. Applicants further represent that the Reorganization will not have adverse tax consequences for any Variable Fund or Select Fund shareholder.

B. Consistency With Applicant's Policies and the General Purposes of the 1940 Act

1. Applicants represent that the Reorganization will not be approved unless the boards of each Fund have determined that the investment objectives and policies of the corresponding series of Variable and Select Fund are compatible. Applicants assert that no significant differences exist between Variable Fund and Select Fund regarding investment policies, borrowing and lending limitations, permitted transactions, or quality of investments.[3]

2. Rule 17a–8 under the 1940 Act exempts from the prohibitions of Section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers. Because the Applicants may be affiliated with one another for reasons for reasons other than sharing an investment adviser, directors/trustees, and officers, Applicants may not be able to rely on Rule 17a–8.

3. Applicants have agreed, nevertheless, to comply with the substantive requirements of the Rule 17a–8. Applicants represent that: (i) The directors of Variable Fund have determined that the Reorganization will be in the best interests of the shareholders of each Variable Fund series, and will not result in the dilution of the current interests of any such shareholder or Variable Contract owner; and (ii) the trustees of Select Fund have determined that the Reorganization will be in the best interests of the shareholders of each Select Fund series, and will not result in the dilution of the current interests of any such shareholder or contract owner having contract value allocated through the Pacific Select Separate Accounts.

4. Moreover, Applicants assert that, although the nature of the affiliations may preclude them from relying on the exemption afforded by Rule 17a–8 under the 1940 Act, the directors/trustees of each fund, including the disinterested directors/trustees, have made the findings required by Rule 17a–8.

5. Applicants also represent that the Reorganization is consistent with the general purposes of the 1940 Act, and does not present any of the conditions or abuses that the 1940 Act was designed to mitigate or eliminate. In particular, Section 1(b)(6) of the 1940 Act provides that the national public interest and the interest of investors are adversely affected when investment companies are recognized without the consent of their security holders. Applicants submit that the Reorganization Plan must receive the approval of shareholders of each series of Variable Fund and the pertinent series of Select Fund (the shares of both Funds being voted in proportion to the instructions received from contract owners having a voting interest in each series of each Fund). Variable Contract owners will receive a proxy statement/prospectus containing all material disclosures, including a description of all material aspects of any proposed Reorganization Plan, and a copy thereof. Likewise, contract owners with contract value allocated to the variable accounts of the Pacific Select Separate Accounts that invest in the pertinent series of Select Fund will receive a proxy statement containing, among other things, information relating to the Reorganization Plan and the transactions contemplated therein, and will have an opportunity to vote on the Reorganization.

Conclusion

Applicants request an order of the Commission pursuant to Section 17(b) of the 1940 Act exempting the Reorganization from the provisions of Section 17(a) of the 1940 Act. Applicants submit that, for the reasons set forth above, the terms of the Reorganization, as set forth in the Reorganization Plan, including the consideration paid and received, are reasonable and fair to shareholders of each series of Variable Fund and Select Fund, and to contract owners invested therein, and do not involve overreaching on the part of any person concerned. Applicants further submit that the proposed Reorganization will be consistent with the policies of Variable Fund and Select Fund and each series thereof, as well as with the general purposes of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–25728 Filed 10–17–94; 8:45 am]

BILLING CODE 8010–01–M

[3] Applicants note that there are differences between the stated objectives of each Fund's Equity Income series. However, Applicants represent that, while the two series have investment objectives that are stated somewhat differently, there is a great deal of commonality in their stated investment policies.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

October 12, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Cabletel Communications Corporation Common Shares, No Par Value (File No. 7–13088)

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 2, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 94–25643 Filed 10–17–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34821; International Series Release No. 729; File No. SR–Amex–94–24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Warrants on the Nikkei Stock Index 300

October 11, 1994.

I. Introduction

On June 17, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade warrants on the Nikkei Stock Index 300 ("Nikkei 300 Index" or "Index"). On September 7, 1994, the Exchange filed Amendment No. 1 to the proposed rule change.[3]

Notice of the proposed rule change appeared in the **Federal Register** on July 20, 1994.[4] No comments were received on the proposed rule change. This order approves the proposed rule change and Amendments No. 1 thereto.

II. Description of the Proposal

The Amex proposes to list index warrants based on the Nikkei 300 Index, and index comprised of 300 representative stocks of the first section[5] of the Tokyo Stock Exchange ("TSE"). On August 11, 1994, the Commission approved a proposal by the Exchange to list and trade options and full-value and reduced-value long-term options on the Index.[6]

A. Composition and Maintenance of the Index

The Nikkei 300 Index was designed by Nihon Keizai Shimbun, Inc. ("NKS"). The Amex represents that Index component stocks were selected by NKS for their high market capitalizations, and their high degree of liquidity, and are representative of the relative distribution of industries within the broader Japanese equity market.

As of July 8, 1994, the total capitalization of the Index was approximately US$2.47 trillion.[7] Market capitalization of the individual stocks in the Index ranged from a high of US$83.8 billion to a low of US$1.03 billion, with a median of US$3.56 billion and a mean of US$8.25 billion. In addition, the average daily trading volume of the stocks in the Index, for the six-month period ending June 30, 1994, ranged from a high of 4,740,000 shares to a low of 6,000 shares, with a mean and median of approximately 676,000 and 417,000 shares, respectively. The highest weighted component stock in the Index accounts for 3.39 percent of the Index. The five largest Index components account for approximately 14.9 percent of the Index's value. The lowest weighted component stock comprises 0.042 percent of the Index, and the five smallest Index components account for approximately 0.25 percent of the Index's value.

The Index is maintained by NKS. To maintain the continuity of the Index, NKS will adjust the Index divisor to reflect certain events relating to the component stocks. These events include, but are not limited to, changes in the number of shares outstanding, spin-offs, certain rights issuances, and mergers and acquisitions. The Amex represents that NKS reviews the composition of the Index periodically.

B. Calculation of the Index

The Nikkei 300 Index is capitalization-weighted and reflects changes in the prices of the Index component securities relative to the base date of the Index (October 1, 1982). The value of the Index is calculated by multiplying the price of each component security by the number of shares outstanding of each such security, adding the products, and dividing by the current Index divisor. The Index divisor is adjusted to reflect certain events relating to the component stocks.[8] The Index had a closing value of 299.47 on July 13, 1994.

Because trading does not occur on the TSE during the Amex's trading hours, the daily dissemination of the Index value is calculated by the Amex once each day based on the most recent official closing price of each Index component security as reported by the TSE. This closing value is disseminated throughout the trading day on the Amex.

C. Warrant Listing Standards and Customer Safeguards

The Exchange proposes to trade Nikkei 300 Index warrants pursuant to Section 106 of the Amex Company Guide ("Section 106"). Under Section

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] In Amendment No. 1, the Amex represented that (1) the Amex will advise its member firms that Index warrants may only be sold to investors whose accounts have been approved for options trading pursuant to Amex Rule 921; (2) Index warrants will, for margin purposes, be treated as if they were option contracts subject to Amex Rule 462(d); (3) the Amex will use the same surveillance procedures that it currently has in place for index warrants listed and traded on the Exchange to surveil trading in warrants on the Index; and (4) the Exchange is currently negotiating with the Tokyo Stock Exchange to obtain a surveillance sharing agreement and expects to have such an agreement in place prior to the listing and trading of Index warrants. See Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Division of Market Regulation, Commission, dated September 7, 1994.

[4] See Securities Exchange Act Release No. 34365 (July 13, 1994), 59 FR 37106 (July 20, 1994).

[5] First section stocks are distinguished from second section stocks by more stringent listing standards.

[6] See Securities Exchange Act Release No. 34526 (August 11, 1994), 59 FR 42610 (August 18, 1994).

[7] Based on the July 8, 1994 exchange rate of Y98.2 per US$1.00.

[8] See supra Section II.A. The Index divisor was set to give the Index a value of 100 on its base date.

106, the Amex may approve for listing warrants on established foreign and domestic market indexes. The Commission has previously approved the listing and trading on the Amex of certain foreign index warrants based on the Nikkei Stock Average,[9] the FT-SE 100 Index,[10] the CAC–40 Index,[11] and the Hong Kong 30 Index,[12] all listed in accordance with Section 106.

The Amex represents that the Index warrant issues will conform to the index warrant listing guidelines contained in Section 106. Specifically, the listing guidelines of the Amex will require that (1) the issuer thereof shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements of Amex Company Guide Section 101(a);[13] the term of warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and a minimum aggregate market value of $4,000,000.

The Amex has proposed applying the same margin treatment as it requires for Amex-listed options, as wet forth in Amex Rule 462(d), to the purchase of Index warrants.[14]

The Amex also proposes that Nikkei 300 Index warrants will be direct obligations of their issuer, subject to cash settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Because warrants are derivative in nature and closely resemble index options, the Amex has proposed safeguards that are designed to meet the investor protection concerns raised by the trading of index options. First, the Exchange represents that it will require that Index warrants only be sold to investors whose accounts have been approved for options trading pursuant to Amex Rule 921.[15] Second, pursuant to Amex rule 411, Commentary .02, the Exchange's options suitability standards contained in Amex Rule 923 shall apply to recommendations in Index warrants. Third, pursuant to Amex Rule 421, Commentary .02, discretionary orders in Index warrants must be approved and initialled on the day entered by a Senior Registered Options Principal or a Registered Options Principal. Finally, the Amex, prior to commencement of trading in Index warrants, will distribute a circular to its membership to call attention to the specific risks associated with Index warrants.

D. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index warrants to monitor trading in Index warrants. The Exchange represents that it is currently negotiating with the TSE to obtain a surveillance sharing agreement and expects to have such an agreement in place prior to the listing and trading of Index warrants.[16]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[17] Specifically, the Commission finds that the trading of warrants based on the Nikkei 300 Index will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with the Japanese equity market and provide a surrogate instrument for trading in the Japanese securities market.[18] The trading of warrants based on the Nikkei 300 Index should provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of the Japanese equity market.

In addition, the Commission believes, for the reasons discussed below, that the Amex has adequately addressed issues related to customer protection, index design, surveillance, and market impact of Nikkei 300 Index warrants.

A. Customer Protection

Due to the derivative nature of index warrants, the Commission believes that Nikkei 300 Index warrants should only be sold to investors capable of evaluating and bearing the risks associated with trading in such instruments and that adequate risk disclosure be made to investors. In this regard, the Commission notes that the rules and procedures of the Exchange that address the special concerns attendant to the secondary market trading of index warrants will be applicable to the Nikkei 300 Index warrants. In particular, by imposing the special suitability, account approval, disclosure, and compliance requirements noted above, the Amex has adequately addressed potential public customer problems that could arise from the derivative nature of Nikkei 300 Index warrants. Moreover, the Amex plans to distribute a circular to its members identifying the specific risks associated with warrants on the Nikkei 300 Index and, pursuant to the Amex's listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue Nikkei 300 Index warrants.

B. Index Design and Structure

The Commission finds, as it did in approving Nikkei 300 Index options, that it is appropriate and consistent with the Act to classify the Index as a broad-based index. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the Japanese equity market, and, among other things, contains a large number of stocks that trade in that market. First, the Index consists of 300 actively-traded stocks traded on the first section of the TSE, representing 36 different industry groups in Japan. Second, the market capitalizations of the stocks comprising the Index are very large. Specifically, the total capitalization of the Index, as of July 8, 1994, was US$2.47 trillion, with the market capitalizations of the individual

[9] See Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376 (January 4, 1990).

[10] See Securities Exchange Act Release No. 27769 (March 6, 1990), 55 FR 9380.

[11] See Securities Exchange Act Release No. 28544 (October 17, 1990), 55 FR 42792 (October 23, 1990).

[12] See Securities Exchange Act Release No. 33036 (October 8, 1993), 58 FR 53588 (October 15, 1993).

[13] Section 101(a) requires the issuer to have stockholders' equity of at least $4,000,000 and pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

[14] See Amendment No. 1, *supra* note 3.

[15] See Amendment No. 1, *supra* note 3.

[16] See Amendment No. 1, *supra* note 3.

[17] 15 U.S.C. § 78f(b)(5) (1988).

[18] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

stocks in the Index ranging from a high of US$83.8 billion to a low of US$1.03 billion, with a medium value of US$3.56 billion and a mean of US$8.25 billion. Third, no one particular stock or group of stocks dominates the Index. Specifically, no single stock comprises more than 3.39 percent of the Index's total value, and the percentage weighting of the five largest issues in the Index accounts for 14.9 percent of the Index's value. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

C. Surveillance

As a general matter, the Commission believes that comprehensive surveillance sharing agreements between the relevant foreign and domestic exchanges are important where an index product comprised of foreign securities is to be traded in the United States. In most cases, in the absence of such a comprehensive surveillance sharing agreement, the Commission believes that it would not be possible to conclude that a derivative product, such as a Nikkei 300 Index warrant, was not readily susceptible to manipulation.

Although the Amex and the TSE do not yet have a written comprehensive surveillance sharing agreement that covers the trading of Nikkei 300 Index warrants,[19] a number of factors support approval of the proposal at this time. First, while the size of an underlying market is not determinative of whether a particular derivative product based on that market is readily susceptible to manipulation, the size of the market for the securities underlying the Nikkei 300 Index makes it less likely that the proposed Index warrants are readily suceptible to manipulation.[20] In addition, the Commission notes that the TSE is under the regulatory oversight of the Japanese Ministry of Finance ("MOF"). The MOF has responsibility for both the Japanese securities and derivatives markets. Accordingly, the Commission believes that the ongoing oversight of the trading activity on the TSE by the MOF will help to ensure that the trading of Nikkei 300 Index warrants will be carefully monitored with a view toward preventing unnecessary market disruptions.

Finally, the Commission and the MOF have concluded a Memorandum of Understanding ("MOU") that provides a framework for mutual assistance in investigatory and regulatory matters.[21] Morever, the Commission also has a longstanding working relationship with the MOF on these matters. Based on the longstanding relationship between the Commission and the MOF and the existence of the MOU, the Commission is confident that it and the MOF could acquire information from one another similar to that which would be available in the event that a comprehensive surveillance sharing agreement were executed between the Amex and the TSE with respect to transactions in TSE-traded stocks related to Nikkei 300 Index warrant transactions on the Amex.[22]

Nevertheless, the Commission continues to believe strongly that a comprehensive surveillance sharing agreement between the TSE and the Amex covering Nikkei 300 Index warrants would be an important measure to deter and detect potential manipulations or other improper or illegal trading involving Nikkei 300 Index warrants. Accordingly, the Commission believes it is critical that the TSE and the Amex continue to work together to consummate a formal comprehensive surveillance sharing agreement to cover Nikkei 300 Index warrants and the component securities as soon as practicable.[23]

D. Market Impact

The Commission believes that the listing and trading of Nikkei 300 Index warrants on the Amex will not adversely impact the securities markets in the United States or in Japan. First, the existing index warrant surveillance procedures of the Amex will apply to warrants on the Index. In addition, the Commission notes that the Index is broad-based on diversified and includes highly capitalized securities that are actively traded on the TSE.

IV. Accelerated Approval of Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication on notice of filing thereof in the **Federal Register**. Amendment No. 1 is consistent with Section 6(b)(5), in that it contains representations by the Exchange, concerning margin, options approved accounts, and surveillance, which serve to protect investors and the public interest, promote just and equitable principles of trade, and prevent fraudulent and manipulative acts and practices. Further, these representations are consistent with those which were made in connection with the Amex's proposal to list warrants on the Hong kong 30 Index.[24] That proposal was published for the full 21-day comment period, and no comments were received. Therefore, the Commission finds that no new regulatory issues are raised by Amendment No. 1. Accordingly, the Commission believes it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 1 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the foregoing that are filed with the Commission, and all written communications relating to the foregoing between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W. Washington, D.C. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–94–24, and should be submitted by November 8, 1994.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[25] that the

[19] The Amex and the TSE, however, currently have a surveillance sharing agreement in place that covers other derivative products traded on the Amex. That agreement has been previously amended by the Amex and the TSE to include new products, such as the trading of Japan Index options. The Exchange represents that it currently is pursuing a comprehensive surveillance sharing agreement with the TSE with respect to Nikkei 300 Index Warrants.

[20] In evaluating the manipulative potential of a proposed index derivative product, as it relates to the securities that comprise the index and the index product itself, the Commission has considered several factors, including (1) the number of securities comprising the index or group; (2) the capitalizations of those securities; (3) the depth and liquidity of the group or index; (4) the diversification of the group or index; (5) the manner in which the index or group is weighted; and (6) the ability to conduct surveillance on the product. See Securities Exchange Act Release No. 31016 (August 11, 1992), 57 FR 37012 (August 17, 1992).

[21] See Memorandum of United States Securities and Exchange Commission and the Securities Bureau of the Japanese Ministry of Finance on the Sharing of Information, dated May 23, 1986.

[22] It is the Commission's expectation that this information would include transaction, clearing, and customer information necessary to conduct an investigation.

[23] See supra note 19.

[24] See supra note 12.

[25] 15 U.S.C. 78s(b)(2) (1988).

proposed rule change (SR–Amex–94–24), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–34820; File No. SR–Amex–94–27]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Basic Industry Portfolio Index Term Notes

October 11, 1994.

I. Introduction

On August 8, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19B-4 Thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to list and trade Indexed Term Notes ("Notes"), the return on which is based upon a portfolio of securities issued by companies involved in "basic" industries[3] ("Basic Industry Portfolio"). The Exchange filed Amendment No. 1 to the proposal on August 24, 1994.[4] Notice of the proposal, as amended, appeared in the **Federal Register** on August 31, 1994.[5] No comment letters were received on the proposed rule change. This order approves the proposal, as amended.

II. Description of the Proposal

Under Section 107 of the Amex Company Guide ("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.[6] The Amex now proposes to list for trading, under Section 107A of the Guide, Notes whose value is based in whole or in part on a static index composed of twenty-six actively-traded equity securities issued by companies involved in Basic Industries.[7]

The Notes are non-convertible debt securities of Lehman Brothers, Inc. ("Lehman Brothers") and will conform to the listing guidelines under Section 107A of the Guide.[8] Although the specific maturity date will not be established until immediately prior to the time of the offering, the Notes will provide for maturity within a period of not less than one nor more than seven years from the date of issue. The Notes provide for a single payment at maturity, and will bear no periodic payments of interest. Basic Industry Portfolio Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the "Original Portfolio Value" and the "Ending Average Portfolio Value;" provided, however, that: (1) the amount payable at maturity will not be less than 90% of the principal amount of the Notes; and (2) the issuer may place a cap on the amount to be paid on the Notes at maturity.[9] The "Original Portfolio Value" is the value of the Basic Industry Portfolio on the date on which the issuer prices the Notes for the initial offering to the public. The "Ending Average Portfolio Value" is the average of the closing prices of the Basic Industry Portfolio securities for a specified number of days prior to maturity of the Notes.[10] The Ending Average Portfolio Value will be used in calculating the amount owners will receive upon maturity.[11]

If the market value of the Basic Industry Portfolio has declined, the owners of the Basic Industry Portfolio Notes will receive at least 90% of the principal amount of the Notes. The payment at maturity is based on changes in the value of the Basic Industry Portfolio, subject to any cap on appreciation that may be included by the issuer, but does not reflect the payment of dividends on the securities that comprise the portfolio. Basic Industry Portfolio Notes are cash-settled in that they do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate value of the Basic Industry Portfolio securities.

According to the Amex, Basic Industry Portfolio Notes will allow investors to combine the protection of a portion of the principal amount of the Notes with a potential additional payment based upon the performance of a portfolio of securities representing 26 highly capitalized companies engaged in Basic Industries. In particular, the proposed Basic Industry Portfolio Notes will provide at least 90% principal protection with the opportunity to participate in any upside appreciation of the underlying Basic Industry Portfolio, subject to any cap on appreciation that may be included by the issuer.

The Basic Industry Portfolio consists of securities of 26 companies that

[26] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] Basic industries would include such industries as chemicals, steel, aluminum, paper, and oil ("Basic Industries").

[4] In Amendment No. 1 to the proposed rule change, the Exchange proposes to: (1) provide that at maturity, holders of the indexed term notes will receive a minimum of 90% of the principal amount of the indexed term notes; and (2) amend the listing standards regarding foreign securities and American Depository Receipts ("ADRs") represented in the index underlying the indexed term notes. See Letter from Benjamin Krause, Senior Vice President, Capital Markets Group, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated August 24, 1994.

[5] See Securities Exchange Act Release No. 34597 (August 25, 1994), 59 FR 45048 (August 31, 1994).

[6] See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[7] The specific components of the Basic Industry Portfolio are: Alcan Aluminum; American Barrick Resources; Bethlehem Steel; Cyprus Amax Minerals; Dow Chemical; Du Pont (E.I.) De Nemours; Echo Bay Mines; Geneva Steel; Georgia Gulf; Georgia Pacific; IMC Fertilizer; Inco; International Paper; Kerr McGee; Kaiser Aluminum; Lyondell Petrochemical; Monsanto; Morton International; Northwestern Steel; Nucor; Phelps Dodge; Placer Dome; Reynolds Metals; USX–U.S. Steel Group; Weirton Steel; and Weyerhaeuser.

[8] Specifically, the Notes must have: (1) A minimum public distribution of one million trading units; (2) a minimum of 400 holders; (3) an aggregate market value of at least $4 million; and (4) a term of at least one year. Additionally, the issuer of the Notes (*i.e.*, Lehman Brothers) must have assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. As an alternative to these financial criteria, the issuer must have either: (1) assets in excess of $200 million and stockholders' equity in excess of $10 million; or (2) assets in excess of $100 million and stockholders' equity in excess of $20 million.

[9] For example, Lehman Brothers could place a cap on the amount to be received at maturity as a stated percentage of the issuance price, *e.g.*, 150% of the issuance price. Alternatively, a cap could be in the form of a participation rate whereby a holder of the Notes would participate in a stated percentage of the total percentage change between the Ending Portfolio Value and the Original Portfolio Value, *e.g.* 80% of the total appreciation of the Basic Industry Portfolio during the term of the Notes. The Commission notes that these examples are by way of illustration, not of limitation, as to how a cap on the amount to be paid to holders of the Notes at maturity could be constructed by Lehman Brothers.

[10] Specifically, the Ending Average Portfolio Value will equal the average of the closing prices for the Basic Industry Portfolio securities for the first 10 of the last 20 trading days prior to maturity of the Notes. Telephone conversation between Benjamin Krause, Senior Vice President, Capital Markets Groups, Amex, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on October 5, 1994.

[11] The Basic Industry Portfolio Notes will entitle a holder at maturity to receive not less than 90% of the original issue price for the Notes. Additionally, holders of the Notes may not receive the full amount of the change between the Ending Portfolio Value and the Original Portfolio Value.