the specialist, the specialist will receive 60% of the contracts and the controlled account will receive 40% of the contracts; and where there are two controlled accounts on parity, the specialist will receive 40% of the contracts and each controlled account will receive 30% of the contracts. In qualified situations where there are three or more controlled accounts on parity with the specialist, the existing Two-for-One Split will continue to apply whereby the specialist will be counted as two crowd participants.

The Exchange believes that in transactions where there are less than three controlled accounts on parity with the specialist, the current Two-for-One split becomes overly burdensome on those controlled accounts. For example, applying the Two-for-One Split to a 100 contract buy order in a trading crowd consisting of one ROT and the specialist, will result in the specialist selling 66 contracts and the ROT selling 34 contracts. Pursuant to the proposed amendment, in the above example the specialist's share will be reduced to 60 contracts and the ROT's share will increase to 40 contracts. As another example, where there are two ROTs on parity with a specialist, the present Two-for-One Split will entitle the specialist to sell 50 contracts and each ROT to sell 25 contracts. The proposal will reduce the specialist's share to 40 contracts and increase each ROT's share to 30 contracts. These results, the Exchange believes, demonstrate that while the specialist will continue to receive an enhanced split, the split will be reduced in small crowds where the impact on ROTs is more pronounced.

Finally, the Exchange also proposes to codify the Two-for-One and New Unit Split provisions, as amended herein, into new Options Floor Procedure Advice B–6 for ease of reference on the trading floor. Similarly, to improve the organization of Rule 1014, the Phlx also proposes to reorganize Phlx Rule 1014 by numbering the Two-for-One Split provisions as Rule 1014(g)(ii) and by moving the New Unit Split provisions from Commentary .17 to Rule 1014(g)(iii).

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)[10] in that the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, as the Commission stated in approving the New Unit Split and the Two-for-One Split, enhanced specialist participation for equity and index option parity trades may serve to aid the Exchange in attracting and retaining well capitalized specialist units to the Exchange without unreasonably restraining competition or harming investors.[11]

Further, the Commission believes that it is appropriate to amend the Two-for-One and New Unit Splits to state that the enhanced participations apply when an equity or index option specialist is on parity with controlled accounts and not just with ROT orders. The Commission's main concern in originally approving the enhanced specialist participations was ensuring that customer orders were not disadvantaged by the application of the enhanced splits.[12] Because the definition of controlled account excludes customer accounts, the protection afforded to customer orders is not in anyway diminished by this proposal.

Finally, the only other substantive amendment in the current proposal is to alter the Two-for-One Split in situations where the specialist is on parity with less than three controlled accounts. Because the effect of this amendment is merely to reduce the benefit given to specialists on parity trades and, accordingly, to minimize the impact of the Two-for-One Split on controlled accounts, the Commission believes that the proposal does not raise any new issues that were not adequately addressed when the Two-for-One Split was originally approved.[13]

The Commission believes that the remaining proposed amendments are non-substantive and, therefore, do not raise any material regulatory issues. Specifically, the proposal to reorganize the structure of Rule 1014 and to incorporate the New Unit and Two-for-One Splits, as amended, into a new Options Floor Procedure Advice, may reduce potential confusion by providing easier to use references to the enhanced participation provisions.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 merely clarifies the manner in which the Two-for-One Split will be applied and corrects an erroneous cross-reference, neither of which raise any new regulatory issues that were not addressed in the original proposal. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to the Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–94–59 and should be submitted by March 29, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–94–59), as amended is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5580 Filed 3–7–95; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] *See* Exchange Act Release Nos. 34109, *supra* note 6, and 34606 *supra* note 7.

[12] *Id.*

[13] *See* Exchange Act Release No. 34606, *supra* note 7.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–20931; 812–8630]

Dean Witter Reynolds Inc., et al., Notice of Application

March 1, 1995.

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

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Dean Witter Reynolds Inc. (the ''Sponsor''); and Dean Witter Select Municipal Trust, Dean Witter Select

Corporate Trust, Dean Witter Select Investment Trust, Dean Witter Select Equity Trust, and Dean Witter Select Government Trust (the ''Trusts'').

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions for sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 26(a)(2)(C) of the Act and rule 22c–1 thereunder, and pursuant to section 11(a) to amend a prior order (the ''Prior Order'') granting relief from section 11(c).[1]

SUMMARY OF APPLICATION: Applicants seek to impose sales charges on a deferred basis and waive the deferred sales charge in certain cases, exchange Trust units having deferred sales charges, and exchange units of a terminating series of a Trust for units of the next available series of that Trust.

FILING DATES: The application was filed on October 8, 1993 and amended on October 31, 1994, January 30, 1995, and February 17, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 27, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202) 942–0570 or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

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

Applicant's Representations

1. Each of the Trusts is a unit investment trust sponsored by the Sponsor. The Trusts are made up of one or more separate series (''Series''). Over seven hundred Series of the Trusts are currently outstanding.

2. Each Series is created by a trust indenture among the Sponsor, a banking institution or trust company as trustee, and an evaluator. The Sponsor acquires a portfolio of securities and deposits them with a trustee in exchange for certificates representing fractional undivided interests in the portfolio of securities (''Units''). Units currently are offered to the public through the Sponsor and other underwriters and dealers at a price based upon the aggregate offering side evaluation of the underlying securities plus an up-front sales charge. The sales charge currently ranges from 1.50% to 5.50% of the public offering price. The Sponsor may offer a discounted sales charge to unitholders within a Series based on the quantity of Units purchased. The sales charge may also vary among Series depending on the terms of the underlying securities.

3. Applicants seek an order under section 6(c) exempting them from sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 26(a)(2)(C) and rule 22c–1 thereunder to let them impose sales charges on Units on a deferred basis and waive the deferred sales charge in certain cases. Under applicants' proposal, the Sponsor will continue to determine the amount of sales charge per Unit at the time portfolio securities are deposited in a Series. The Sponsor will have the discretion to defer collection of all or part of this sales charge over a period (''Collection Period'') following the settlement date for the purchase of Units. The Sponsor will in no event add to the deferred amount initially determined any additional amount for interest or any similar or related charge to reflect or adjust for such deferral.

4. The deferred sales charge (''DSC'') may be (a) deducted from the proceeds of a sale, exchange, or redemption of units or termination of the Series (''Disposition Amount''); or (b) deducted from (i) amounts received on the sale of portfolio securities, (ii) amounts received on the maturity of portfolio securities, (iii) income distributions on the Units, or (iv) a combination thereof (''Distribution Deductions''). Alternatively, the trustee may advance the DSC on behalf of the Series on a periodic basis, in which case the trustee will be reimbursed from the principal account of the Series upon the receipt of proceeds from the maturity or sale of portfolio securities or from the income account of the Series. The total of all these amounts will not exceed the aggregate DSC per unit. The DSC may be paid out of the principal or income accounts of the Series and securities may be sold in order to pay any portion of the DSC due on a certain date.

5. For purposes of calculating the amount of the DSC due upon redemption or sale of Units, it will be assumed that Units on which the balance of the sales charge has been collected from installment payments are liquidated first. Any Units disposed of over such amounts will be redeemed in the order of their purchase, so that Units held for the longest time are redeemed first.

6. The Sponsor may adopt a procedure of waiving the DSC payable out of net sales, exchange, or redemption proceeds, if necessary, so as not to jeopardize the tax-exempt nature of various investors such as Individual Retirement Accounts and employee benefits plans, if otherwise required for tax purposes, or for such other reasons as disclosed in the prospectus.

7. The Collection Period and the manner in which the Disposition Amount and/or Distribution deductions are calculated shall be stated in the prospectus, including the amount and date of each Distribution Deduction, if any. The prospectus for a Series will include disclosure that portfolio securities may be sold to pay the DSC if amounts in the income account are insufficient to pay the DSC or proceeds from portfolio securities are intended to pay the DSC. The confirmation received by a holder on the purchase, sale, exchange, or redemption of a Unit will indicate the sales charge as required by National Association of Securities Dealers, Inc. rules. The account statement of a holder will reflect a value of a Unit. The account statement, however, will not reflect the amount a holder paid for the up-front sales charge. At the end of every year, the Trust's annual report will reflect the aggregate amount of Distribution Deductions, both on a Series and per Unit basis.

8. The Prior Order permits applicants to allow unitholders to exchange Units of one Series for Units of another Series subject to a sales charge of up to 2.5% per Unit (generally 2.0% per Unit for equity Series and 2.5% per Unit for municipal bond series). When Units held for less than five months are exchanged for Units with a higher regular sales charge, the sales charge will be the greater of (a) the reduced sales charge or (b) the difference between the sales charge paid in acquiring the Units being exchanged and the regular sales charge for the quantity of Units being acquired,

[1] Dean Witter Reynolds Inc., *et al.* Investment Company Act Release Nos. 14934 (Feb. 12, 1986) (notice) and 14987 (March 13, 1986) (order).

determined as of the date of the exchange.

9. Applicants seek to amend the Prior Order to permit offers of exchange of Units subject to a DSC. The DSC, including Distribution Deductions uncollected at the time of the exchange, would be imposed at the time of the exchange. The sales charge imposed will be fixed at the time of the exchange, will be equal to the greater of a fixed dollar amount or the amount of the DSC remaining on the Units acquired, and may be comprised of an upfront and/or deferred amount, which deferred amount, if applicable, would include any portion of the sales charge not collected at the time of exchange. In the case where a Unit subject to a DSC is being exchanged, the proceeds due to the exchanging investor will be net of the DSC due upon the sale of a Unit at such time. Such net proceeds will be used to purchase the acquired Units. Those Units may be subject to the greater of a sales load of a fixed dollar amount or the amount of the DSC remaining on the Units acquired in the exchange.

10. The Sponsor may offer certain Series that have intermediate or short-term stated maturities. Upon termination of such Series, the Sponsor may create a new Series with the same investment objective, the same type of portfolio securities as the terminating Series, and in certain instances some of the same portfolio securities. Applicants wish to make Units of the new Series available to the unitholders of the new Units plus a reduced sales charge on an up-front and/or deferred basis (the ''Rollover Option''). Although applicants believe that the Prior Order already permits the Rollover Option, they request that the Prior Order be amended to cover the Rollover Option explicitly.

Applicants' Legal Analysis

1. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 2(a)(32) defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent of those assets. Because the imposition of the DSC defers the deduction of a portion of the sales charge, applicants seek an exemption from section 2(a)(32) so that Units subject to a deferred sales charge are considered redeemable securities for purposes of the Act.[2]

3. Section 2(a)(35) defines the term ''sales load'' to be the difference between the sales price and the proceeds to the issuer, less any expenses not properly chargeable to sales or promotional expenses. Because a deferred sales charge is not charged at the time of purchase, an exemption from section 2(a)(35) is necessary.

4. Section 22(c) and rule 22c–1 require that the price of a redeemable security issued by an investment company for purposes of sale, redemption, and repurchase be based on the investment company's current net asset value. Because the imposition of a deferred sales charge may cause a redeeming unitholder to receive an amount less than the net asset value of the redeemed Units, applicants seek an exemption from this section and rule.

5. Section 22(d) requires an investment company and its principal underwriter and dealer to sell securities only at a current public offering price described in the investment company's prospectus. Because sales charges traditionally have been a component of the public offering price, section 22(d) historically required that all investors be charged the same load. Rule 22d–1 was adopted to permit the sale of redeemable securities ''at prices that reflect scheduled variations in, or elimination of, the sales load.'' Because rule 22d–1 may not be interpreted to extend to scheduled variations in deferred sales charges, applicants seek relief from section 22(d) to permit each Series to waive or reduce the DSC in certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 under the Act.

6. Section 26(a)(2) in relevant part prohibits a trustee or custodian of a unit investment trust from collecting from the trust as an expense any payment to a depositor or principal underwriter thereof. Because of this prohibition, applicants need an exemption to permit the trustee to collect the DSC installments from Distribution Deductions or the principal account.

7. Applicants believe that implementation of the DSC program in the manner described above would be fair and in the best interests of the unitholders of the Trusts. Thus, granting the requested order would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

8. Section 11(c) prohibits any offers of exchange of the securities of a registered until investment trust for the securities of any other investment company, unless the terms of the offer have been approved by the SEC. Applicants assert that the reduced sales charge imposed at the time of exchange is justified by cost savings because that shareholder would require less explanation concerning the procedures and operations of the Trusts.

Applicants' Conditions

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

1. Whenever the exchange option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the exchange option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Trust under section 22(e) and the rules and regulations promulgated thereunder, or (ii) a Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies, and restrictions.

2. The amount of the sales charge per Unit collected from a holder at the time of any exchange or conversion of a Unit will be lower than the sales charge collected on the initial purchase of the same Unit at such time.

3. The prospectus of each Trust offering exchanges and any sales literature or advertising that mentions the existence of the exchange option will disclose that the exchange option is subject to modification, termination, or suspension, without notice except in certain limited cases.

4. Each Series offering Units subject to a deferred sales charge will include in its prospectus the table required by item 2 of From N–1A (modified as appropriate to reflect the differences between unit investment trusts and open-end management investment

[2] Without an exemption, a trust selling units subject to a deferred sales charge could not meet the definition of a unit investment trust under section 4(2) of the Act. Section 4(2) defines a unit investment trust as an investment company that issues only ''redeemable securities.''

companies) and a schedule setting forth the number and date of each installment payment.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5583 Filed 3–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20932; 812–9454]

Dean Witter Select Equity Trust, et al.

March 1, 1995.

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

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

APPLICANTS: Dean Witter Select Equity Trust and Dean Witter Reynolds Inc. (''Dean Witter'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act that would exempt applicants from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a terminating series of a unit investment trust to sell portfolio securities to a new series of the trust.

FILING DATE: The application was filed on January 26, 1995 and amended on February 16, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 27, 1995 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Dean Witter Reynolds Inc., Unit Trust Department, Two World Trade Center, New York, NY 10048, Attn.: Thomas Hines.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Dean Witter Select Equity Trust, a unit investment trust registered under the Act, consists of several series (each a ''Series''). All of the Series currently outstanding are Select 10 Series (''Select 10 Series''). Dean Witter is the Series' sponsor. Applicants request that the relief sought herein apply to future Series for which Dean Witter serves as sponsor.

2. The investment objective of each Selection 10 Series is to seek a greater total return than the stocks comprising the entire related index (e.g., the Dow Jones Industrial Average, the Hang Seng Index, or the Financial Times Ordinary Share Index) (each an ''Index''). Each Select 10 Series acquires approximately equal values of the tens stocks in the Index having the highest dividend yields as of a specified date, and holds those stocks for approximately one year. Dean Witter intends that, as each Select 10 Series terminates, a new Series based on the appropriate Index will be offered for the next year.

3. Each Series has a contemplated date (a ''Rollover Date'') on which holders of units in that Series (a ''Rollover Series'') may at their option redeem their units in the Rollover Series and receive in return units of a subsequent Series of the same type (a ''New Series'') which is created on or about the Rollover Date, and has a portfolio which contains securities (''Qualified Securities'') which are (i) actively traded (i.e., have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least 25,000 United States dollars) on an exchange (a ''Qualified Exchange'') which is either (a) a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934 or (b) a foreign securities exchange which meets the qualifications set out in the proposed amendment to rule 12d3–1(d)(6) under the Act as proposed by the SEC and which releases daily closing prices, and (ii) included in an Index.

4. There is normally some overlap from one year to the next in the stocks having the highest dividend yields in an Index and, therefore, between the portfolio of a Rollover Series and the New Series. In the case of the Select 10 Industrial Portfolio 94–1 as compared to the Select 10 Industrial Portfolio 95–1, eight of the ten securities were identical. In connection with its termination, Series 94–1 sold all of its securities on the New York Stock Exchange as quickly as practicable. Likewise, the portfolio of Series 95–1 was acquired in purchase transactions on the New York Stock Exchange. This procedure creates brokerage commissions on portfolio securities of the same issue that are borne by the holders of units of both the Rollover Series and the New Series. Applicants, therefore, request an exemptive order to permit any Rollover Series to sell portfolio securities to a New Series and a New Series to purchase those securities.

5. In order to minimize overreaching, applicants agree that Dean Witter will certify in writing to the trustee, within five days of each sale from a Rollover Series to a New Series, (a) that the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Qualified Exchange for the sale date of the securities subject to such sale. The trustee will then countersign the certificate, unless, in the unlikely event that the trustee disagrees with the closing sales price listed on the certificate, the trustee immediately informs Dean Witter orally of any such disagreement and returns the certificate within five days to Dean Witter with corrections duly noted. Upon Dean Witter's receipt of a corrected certificate, if Dean Witter can verify the corrected price by reference to an independently published list of closing prices for the date of the transactions, Dean Witter will ensure that the price of units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units or termination of the Rollover Series, accurately reflect the corrected price. To the extent that Dean Witter disagrees with the trustee's corrected price, Dean Witter and the trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to or purchase securities from the company. Investment companies under common control may be considered affiliates of one another. The Series may be under common control because they have Dean Witter as a sponsor.