

proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) for an exemption from section 17(a).<sup>2</sup>

3. Applicants assert that the proposed transactions meet the standards of sections 6(c) and 17(b). As discussed previously, protections against duplicative or excessive advisory fees and sales loads ensure that the consideration to be paid in the proposed transactions will be reasonable and fair. A Select Fund's investment in an Underlying Fund will be in accordance with the Select Fund's investment restrictions and will be consistent with its policies as recited in its registration statement. Moreover, applicants represent that because the proposal provides greater diversification, lower costs, and increased administrative efficiency without diminishing the protections afforded to investors, it is consistent with the purposes of the Act.

#### *Applicants' Conditions*

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

1. The Select Funds and each Underlying Fund will be part of the same "group of investment companies" as defined in paragraph (a)(5) of rule 11a-3 under the Act.

2. The Select Funds will not invest in an Underlying Fund unless that Fund may not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except for securities received as a dividend or as a result of a plan of reorganization of any company.

3. At least a majority of each Select Fund's trustees will be Independent Trustees.

4. Prior to approving any advisory contract under section 15 of the Act or promptly upon the termination of a fee waiver, the trustees of each Select Fund, including a majority of the Independent Trustees, will find that the advisory fees charged under such contract, if any, are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Underlying

Fund in which a Select Fund may invest; provided that no such findings will be necessary if the investment adviser to an Underlying Fund waives all advisory fees that may be imposed for serving as investment adviser to the Underlying Fund, or, if only a portion of those advisory fees are waived, the investment adviser or another party reimburses the Underlying Fund for any advisory fee or portion thereof that is not waived. These findings and their basis will be recorded fully in the minute books of the Select Fund.

5. Any sales charges or service fees, as such terms are defined under rule 2830(b) of the NASD Conduct Rules, as may be charged with respect to securities of a Select Fund, when aggregated with any sales charges and/or service fees borne by the Select Fund with respect to shares of an Underlying Fund, will not exceed the limits set forth in rule 2830(d) of the NASD Conduct Rules.

6. Applicants will provide the following information in electronic format to the Chief Financial Analyst of the SEC's Division of Investment Management as soon as reasonably practicable following each fiscal year-end of each Select Fund, unless the Chief Financial Analyst notifies applicants that the information need no longer be submitted: (a) Monthly average total assets of each Select Fund and each Underlying Fund in which a Select Fund invests; (b) monthly purchases and redemptions (other than by exchange) for each Select Fund and each Underlying Fund in which a Select Fund invests; (c) monthly exchanges into and out of each Select Fund and each Underlying Fund in which a Select Fund invests; (d) month-end allocations of each Select Fund's assets among the Underlying Funds in which it invests; (e) annual expense ratios for each Select Fund and each Underlying Fund in which a Select Fund invests; and (f) a description of any vote taken by the shareholders of any Underlying Fund in which a Select Fund invests, including a statement of the percentage of votes cast for and against the proposal by the Select Fund and by the other shareholders of that Underlying Fund.

7. Substantially all of the assets of each Select Fund will be invested in shares of Underlying Funds. Each Select Fund will not hold any investment securities other than shares of Underlying Funds and cash equivalents.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-25624 Filed 10-4-96; 8:45 am]

BILLING CODE 8010-01-M

#### **Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 7, 1996.

An open meeting will be held on Wednesday, October 9, 1996, at 10 a.m. A closed meeting will be held on Wednesday, October 9, 1996, following the 10 a.m. open meeting. A closed meeting will be held on Thursday, October 10, 1996, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, October 9, 1996, at 10 a.m., will be:

(1) The Commissioner will hear oral argument on an appeal by officers and managers of the Stuart-James Co., Inc., formerly a registered broker-dealer. For further information, please contact: George Zornada at (202) 942-0968.

(2) The Commission will consider whether to issue a release adopting rule and form changes designed to streamline registrant filing requirements with respect to financial statements of significant acquisitions. For further information, please contact: Douglas Tanner, Associate Chief Accountant, Office of Chief Accountant, Division of Corporation Finance, at (202) 942-2960.

(3) The Commission will consider whether to issue a release proposing rules designed to facilitate U.S. press access to offshore press activities. The rules would clarify the conditions under which journalists may be provided access to offshore press conferences, offshore press meetings and press related materials released offshore, where a present or proposed offering of

<sup>2</sup>Section 17(b) applies to specific proposed transactions, rather than an ongoing series of future transactions. See *Keystone Custodian Funds*, 21 S.E.C. 295, 298-99 (1945). Section 6(c) frequently is used in conjunction with section 17(b) to grant relief from section 17(a) to permit an ongoing series of future transactions.

securities or tender offer is discussed, without violating the provisions of Section 5 of the Securities Act, or the procedural requirements of the tender offer rules promulgated under the Williams Act. For Further Information, Please Contact: Luise M. Welby, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942-2990.

(4) The Commission will consider whether to issue a release adopting rule and form changes designed to require registrants to report sales of equity securities that have not been registered under the Securities Act, including securities sold in reliance on Regulation S. For Further Information, Please Contact: Walter Van Dorn, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942-2990.

The subject matter of the closed meeting scheduled for Wednesday, October 9, 1996, following the 10 a.m. open meeting, will be: Post argument discussion.

The subject matter of the closed meeting scheduled for Thursday, October 10, 1996, at 10 a.m., will be: Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.  
Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 3, 1996.

Jonathan G. Katz,  
Secretary.

[FR Doc. 96-25826 Filed 10-3-96; 3:53 pm]

BILLING CODE 8010-01-M

[Release No. 34-37744; File No. SR-Amex-96-27]

**Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to Healthcare/Biotechnology Market Index Target-Term Securities ("MITTS")**

September 27, 1996.

**I. Introduction**

On July 15, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to list and trade Market Index Target-Term Securities ("MITTS"),<sup>3</sup> the return on which is based upon an equal-dollar weighted portfolio of 26 healthcare/biotechnology industry securities ("H/B Index" or "Index").<sup>4</sup> Notice of the proposal appeared in the Federal Register on July 24, 1996.<sup>5</sup> No comment letters were received on the proposed rule change. On September 6, 1996, the Amex filed Amendment No. 1 to the proposed rule change.<sup>6</sup> On September 17, 1996, the Amex filed Amendment No. 2 to the proposal.<sup>7</sup> This order

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

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

<sup>3</sup> "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

<sup>4</sup> Initially, the H/B Index was comprised of 29 stocks. In Amendment No. 1 the Exchange deleted three stocks from the Index. See Amendment No. 1, *infra* note 6. As of July 31, 1996 the Index was comprised of the stocks of the following 26 issuers: Amgen, Inc., Apria Healthcare Group, Inc., Baxter International, Inc., Beverly Enterprises, Biogen, Inc., Chiron Corporation, Columbia/HCA Healthcare Corporation, Emcare Holdings, Inc., Genzyme Corporation, Genesis Health Ventures, Inc., Health Management Associates, Inc., Healthsource, Inc., Healthsouth Corporation, Humana, Inc., Johnson & Johnson, Medpartner/Mullikin, Inc., Neuromedical Systems, Inc., Olsten Corporation, Ornda Healthcorp., Oxford Health Plans, Inc., Phycor, Inc., Quorum Health Group, Inc., Renal Treatment Centers, Inc., Tenet Healthcare Corporation, Total Renal Care Holdings, Inc., and United Healthcare Corporation. According to the Exchange as of September 13, 1996, the market capitalizations of these companies ranged from \$207 million to \$65.6 billion, and average monthly trading volumes over the preceding six month period ranged from 1.44 million to 52.21 million shares.

<sup>5</sup> See Securities Exchange Act Release No. 37447 (July 17, 1996), 61 FR 38485 (July 24, 1996).

<sup>6</sup> In Amendment No. 1 the Exchange revises the list of component securities in the H/B Index by deleting the stocks of Abbott Laboratories, Inc., Caremark International, Inc., and Horizon/CMS Healthcare Corporation. Amendment No. 1 also alters the original proposal to provide that adjustments to the share multiplier will not be made for rights offerings, distributions, recapitalizations, expropriation or nationalization of a foreign issuer or the imposition of certain foreign taxes on shareholders of a foreign issuer. Additionally, Amendment No. 1 provides that H/B MITTS will be traded under the Exchange's equity rules, subject to equity margin requirements, and subject to Amex Rule 411, as described more fully herein. Amendment No. 1 also provides that the H/B Mits are subject to continued listing provisions set forth in Sections 1001 through 1003 in the Exchange's *Company Guide*. The Exchange intends to submit a proposed rule change in the near future to provide continued listing standards that apply specifically to hybrid securities such as the H/B Mits. See Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Livette Lopez, Assistant Director, Office of Market Supervision ("OSM"), Division of Market Regulation ("Division"), Commission, dated September 4, 1996 ("Amendment No. 1").

<sup>7</sup> In Amendment No. 2, the Amex changes the proposal to provide that the share multiplier of each

approves the proposed rule change, as amended.

**II. Description of the Proposal**

Under Section 107A of the Amex *Company Guide*, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>8</sup> The Amex proposes to list for trading under Section 107A of the *Company Guide*, MITTS based on the H/B Index ("H/B MITTS").<sup>9</sup> The H/B Index will be determined, calculated and maintained solely by the Amex.<sup>10</sup>

The MITTS will conform to the initial listing guidelines under Section 107A<sup>11</sup> and continued listing guidelines under Sections 1001-1003<sup>12</sup> of the *Company*

component also will remain constant in the event of a merger, consolidation, dissolution or liquidation of an issuer. See Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, OMS, Division, Commission, dated September 13, 1996 ("Amendment No. 2").

<sup>8</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990) ("Hybrid Approval Order").

<sup>9</sup> The Commission has approved the listing and trading on the New York Stock Exchange of MITTS based upon portfolios of securities representing (1) telecommunications companies, (2) European companies, (3) health care companies, (4) U.S. real estate investment trusts, and (5) restructuring companies. See Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993); 34655 (September 12, 1994), 59 FR 47966 (September 19, 1994); 34691 (September 20, 1994), 59 FR 49264 (September 27, 1994); and 34692 (September 20, 1994), 59 FR 49267 (September 27, 1994) ("MITTS Approval Orders"). The Commission has also approved the listing and trading on the Amex of hybrid securities similar to MITTS, based upon portfolios of securities representing various industries, including, among others, (1) telecommunications companies, (2) banking industry stocks, (3) real estate investment trusts, and, most recently, (4) the ten highest yielding stocks in the Dow Jones Industrial Average. See Securities Exchange Act Release Nos. 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994); 34848 (October 17, 1994), 59 FR 53217 (October 21, 1994); 36130 (August 22, 1995), 60 FR 44917 (August 29, 1995); and 37533 (August 7, 1996) 61 FR 42075 (August 13, 1996).

<sup>10</sup> The Ending Portfolio Value, however, will be determined by Merrill, Lynch, Pierce, Fenner & Smith, Incorporated ("Calculation Agent"). See *infra* note 14.

<sup>11</sup> The initial listing standards for MITTS require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least \$4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess in excess of \$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. In the case of an issuer which is unable to satisfy the earnings criteria stated in Section 101 of the *Company Guide*, the Exchange will require the issuer to have the following: (1) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (2) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

<sup>12</sup> The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part