6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the SEC interprets the Act to require pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions. Each Participating Plan will vote as required by applicable law and governing plan documents.

7. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to determining the existence of a conflict, notifying the Manager, Advisers, Participating Insurance Companies and Participating Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (A) Shares of the Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in the Fund and the interests of Plans investing in the Fund may conflict; and (c) the Board will monitor events in order to identify the existence of any material conflicts of interest and to determine what action, if any, should be taken in response to any such conflict.

9. Each Fund will comply with all the provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Funds) and, in particular, each such Fund will either provide for annual meetings (except to the extent that the SEC may interpret section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although the Funds are not within the trusts described in section 16(c) of the Act) as well as section 16(a) and, if applicable, section 16(b) of the Act. Further, each Fund will act in accordance with the SEC's interpretation of the requirements of section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the SEC may promulgate with respect thereto.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3) under the Act is adopted) to provide exemptive relief from any provisions of the Act or the rules promulgated thereunder, with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds, the Participating Insurance Companies and Participating Plans, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rules 6e–3, as adopted, to the extent applicable.

11. No less than annually, the Manager, Advisers (or any other investment adviser of a Fund), the Participating Insurance Companies and Participating Plans shall submit to the Boards such reports, materials, or data as such Boards may reasonably request so that the Boards may carry out all the obligations imposed upon them by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Boards shall be a contractual obligation of all Participating Insurance Companies and Participating Plans under the agreements governing their participation in the Funds.

12. If a Plan or Plan participant shareholder should become an owner of 10% or more of the issued and outstanding shares of a Fund, such Plan will execute a participation agreement with such Fund including the conditions set forth herein to the extent applicable. A Plan or Plan participant shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Fund.

## Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–3101 Filed 2–8–99; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–23680; 812–11356]**

## Robertson Stephens Investment Trust; Notice of Application

February 4, 1999.

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

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for relief from section 2(a)(19) of the Act.

**SUMMARY OF APPLICATION:** Applicant, a registered investment company, requests an order under section 6(c) of the Act declaring that two of its trustees, each of whom is affiliated with a registered broker-dealer, will not be deemed ''interested persons'' of applicant until June 1, 1999.

**FILING DATE:** The application was filed on October 15, 1998. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 24, 1999, and should be accompanied by proof of service on applicant in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant: Andrew P. Pilara, Jr., President, Robertson Stephens Investment Trust, 555 California Street, San Francisco, California 94104.

**FOR FURTHER INFORMATION CONTACT:** Timothy R. Kane, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

**Applicant's Representations**

1. Robertson Stephens Investment Trust (''Trust'') is a Massachusetts business trust registered under the Act as an open-end management investment company consisting of ten series. Nine series are advised by Robertson, Stephens & Company Investment Management, L.P., and one series is advised by RS Investment Management, Inc., (the ''Advisers''). The Advisers are registered under the Investment Advisers Act of 1940. The Advisers are indirect subsidiaries of BankAmerica Corporation (''BankAmerica'').

2. The Trust's board of trustees (''Board'') is composed of four individuals, three of whom are ''interested persons'' within the meaning of section 2(a)(19) of the Act. Two of the trustees—John W. Glynn, Jr. and James K. Peterson—are interested persons solely because each is affiliated with a broker-dealer registered under the Securities Exchange Act of 1934 (''1934 Act'').

3. Mr. Glynn is a director of Sterling Payot Company (''Sterling''), a private firm that advises senior executives and entrepreneurs on financial and strategic matters. Sterling does not engage in securities trading activity, make markets in securities, or engage in agency transactions. Mr. Peterson is an employee of Mitchum, Jones & Templeton, Inc. (''Mitchum''). Mitchum's business consists primarily in placing private equity investments. Mr. Peterson is a research analyst for Mitchum; he does not purchase, sell, or trade securities for Mitchum.

4. Mr. Peterson became an employee of Mitchum in October 1998. Prior to that time, Mr. Peterson was a disinterested trustee and Mr. Glynn was able to rely on rule 2a19–1 under the Act (discussed below) to be considered a disinterested trustee. Mr. Peterson also would have been able, subject to the conditions set forth in rule 2a19–1, to continue to serve as a disinterested trustee, but for the fact that the rule provides that no more than a minority of the Trust's disinterested trustees may rely on the rule (''minority requirement''). As a result of the minority requirement, neither Mr. Glynn nor Mr. Peterson could rely on the rule.

5. Applicant states that it has not yet reconstituted the Board for several reasons. First, from the time Mr. Peterson became affiliated with Mitchum until mid-November, 1998, BankAmerica had been attempting to sell the Advisers' parent company. Applicant states that, until a sale was completed, it would have been difficult to determine whether any potential trustee would have been affiliated with the ultimate purchaser and, therefore, an interested person of the Trust. Applicant states that an agreement to sell the Advisers' parent company has been reached and is expected to be implemented at the end of February, 1999.[1] Applicant also believes that it would have been difficult to attract new trustees with the experience and judgment appropriate to the position in light of the uncertainty involving the Trust and its advisory arrangements, and that any qualified candidate would have deferred consideration for the position until after the uncertainty had been resolved. Finally, applicant states that the alternative to electing more disinterested trustees would have been resignations by both Mr. Peterson and Mr. Glynn in order to meet the minority requirement in rule 2a19–1. Applicant asserts that the Board believed that losing both Mr. Peterson and Mr. Glynn would not have been in the best interests of the Trust and its shareholders.

6. Applicant seeks an order declaring Mr. Glynn and Mr. Peterson to be disinterested persons until June 1, 1999. Applicant states that the requested relief would allow it sufficient time to reconstitute the Board.

**Applicant's Legal Analysis**

1. Section 2(a)(19)(A)(v) of the Act defines an ''interested person'' of a registered investment company to include any broker-dealer registered under the 1934 Act or any affiliated person of the broker-dealer. Applicant states that Mr. Glynn and Mr. Peterson are interested persons solely because they are affiliated persons of registered broker-dealers.

2. Rule 2a19–1 under the Act provides, in relevant part, that a director of a registered investment company will not be considered an interested person solely because the director is an affiliated person of a registered broker-dealer, provided that: (1) The broker-dealer does not execute any portfolio transactions for the ''company complex,'' as that term is defined in the rule, engage in any principal transactions with the company complex, or distribute shares of the company complex, for at least six months prior to the time the director is to be considered disinterested and for the period during which the director continues to be considered disinterested; (2) the company's board of directors finds that the company and its shareholders will not be adversely affected if the broker-dealer does not engage in transactions for or with the company complex; and (3) no more than a minority of the company's disinterested directors are affiliated with broker-dealers. The Trust states that it may not rely on rule 2a19–1 in determining Mr. Glynn's and Mr. Peterson's status because they would represent two of the three disinterested trustees.

3. The Trust requests an order under section 6(c) of the Act declaring that neither Mr. Glynn nor Mr. Peterson will be deemed an interested person under section 2(a)(19) of the Act until June 1, 1999. Section 6(c) of the Act provides, in part, that the SEC may exempt any person from any provision of the Act or any rule under the Act if and to the extent the 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.

4. Applicant states that its request for relief meets this standard. Applicant asserts that Mr. Glynn's relationship with Sterling and Mr. Peterson's employment with Mitchum pose no potential conflict of interest because all of the requirements of rule 2a19–1, other than the minority requirement, will be met with respect to each. Even

[1] On November 19, 1998, certain senior managers of the Advisers (''Management Group'') signed an agreement to purchase the Advisers' parent company from BankAmerica. On January 26, 1999, the Board approved new advisory agreements and voted to recommend that shareholders approve the agreements at a shareholders meeting scheduled for February 26, 1999. Proxies for the shareholder meeting were mailed on or about February 2, 1999. The new advisory agreements will not be implemented until a majority of the Trust's trustees who are not interested persons have approved the agreements. Applicant further states that no member of the Management Group has any material business or professional relationship with Sterling or Mitchum or with the principal executive officers or controlling persons of Sterling or Mitchum.

though applicant believes that Messrs. Peterson and Glynn will not have the types of conflicts of interest that section 2(a)(19) was designed to address, they will constitute a majority of the disinterested trustees. Applicant believes that any concerns raised by their being in the majority can be addressed by requiring the approval of the third disinterested trustee on any matter that requires approval of a majority of the disinterested trustees.

**Applicant's Conditions**

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. All of the requirements of rule 2a19–1 will be met with respect to each of Mr. Glynn and Mr. Peterson, except paragraph (a)(3) of the rule.

2. The Trust will not consider any action requiring the approval of disinterested trustees to be effective unless such action has been approved by a majority of the disinterested trustees who serve as such without reliance on rule 2a19–1 or the requested order.

3. The Trust may not rely on the requested relief beyond June 1, 1999.

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 99–3099 Filed 2–8–99; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41010; File No. SR–Amex–99–01]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, LLC Relating to Reductions in Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices Values

February 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 1999, the American Stock Exchange, LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Amex proposes to split the Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices to one-half their current values.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to split the Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices to one-half their current values and temporarily increase their respective position and exercise limits to twice their current levels as discussed more fully below.

*Airline Index.* On December 12, 1994, the Commission granted the Exchange approval to permit the trading of options on the Airline Index.[3] Thereafter, on May 1, 1998, the Commission granted the Exchange approval to split the Airline Index in half.[4] Initially, the aggregate value of the stocks contained in the Airline Index was reduced by a divisor to establish an index benchmark value of 200. The Airline Index's current value is approximately 275.[5]

*Natural Gas Index.* On March 7, 1994, the Commission granted the Exchange approval to permit the trading of options on the Natural Gas Index.[6] Initially, the aggregate value of the stock contained in the Natural Gas Index was reduced by a divisor to establish an index benchmark value of 300. The Natural Gas Index's value is currently at 216.[7]

*Pharmaceutical Index.* On June 18, 1992, the Commission granted the Exchange approval to permit the trading of options on the Pharmaceutical Index.[8] Initially, the aggregate value of the stocks contained in the Pharmaceutical Index was reduced by a divisor to establish an index benchmark value of 200. Since its creation, the index value of the Pharmaceutical Index has more than tripled in value from 200 to 742.[9]

*Securities Broker/Dealer Index.* On March 15, 1994, the Commission granted the Exchange approval to permit the trading of options on the Securities Broker/Dealer Index.[10] Thereafter, on March 20, 1998, the Commission granted the Exchange approval to split the Securities Broker/Dealer Index in half.[11] Initially, the aggregate value of the stocks contained in the Securities Broker/Dealer Index was reduced by a divisor to establish an index benchmark value of 300. The Securities Broker/Dealer Index's value is currently at 464.[12]

As a consequence of the rising Indices' values, premium levels for Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Index options have also risen. The Amex cites these higher premium levels as the principal factor that has discouraged retail investors and some market professionals from trading these index options. In addition, the Exchange represents that its membership has indicated that indexes with values between 100 and 200 tend to promote increased liquidity in the overlying

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 35084 (December 12, 1994), 59 FR 65419 (December 19, 1994).

[4] Securities Exchange Act Release No. 39941 (May 1, 1998), 63 FR 25251 (May 7, 1998).

[5] The Airline Index's value as of the close, December 16, 1998, taken from Bloomberg and rounded to the nearest whole number was 275. As of January 28, 1999, the open interest in the index options was approximately 200.

[6] Securities Exchange Act Release No. 33720 (March 7, 1994), 59 FR 11630 (March 11, 1994).

[7] The Natural Gas Index's value as of the close, December 16, 1998, taken from Bloomberg and rounded to the nearest whole number was 216. As of January 28, 1999, the open interest in the index options was approximately 375.

[8] Securities Exchange Act Release No. 39830 (June 18, 1992), 57 FR 28221 (June 24, 1992).

[9] The Pharmaceutical Index's value as of the close, December 16, 1998, taken from Bloomberg and rounded to the nearest whole number was 742. As of January 28, 1999, the open interest in the index options was approximately 200.

[10] Securities Exchange Act Release No. 33766 (March 15, 1994), 50 FR 13518 (March 22, 1994).

[11] Securities Exchange Act Release No. 39775 (March 20, 1998), 63 FR 14741 (March 26, 1998).

[12] The Securities Broker/Dealer Index's value as of the close, December 16, 1998, taken from Bloomberg and rounded to the nearest whole number was 464. As of January 28, 1999, the open interest in the index options was approximately 1000.