

Applicants further state that the Board, including the Independent Trustees, have approved the Exchanges, and that each Exchange will comply with rule 17a-7 (b) through (f).

#### Applicants' Condition

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

1. The Exchanges will comply with the terms of Rule 17a-7 (b) through (f).

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24232; 812-11828]

### H&Q Healthcare Investors and H&Q Life Sciences Investors; Notice of Application

January 3, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

**SUMMARY OF APPLICATION:** Applicants, H&Q Healthcare Investors ("HQH") and H&Q Life Sciences Investors ("HQL") (each a "Fund," and together the "Funds"), request an order to permit each fund to make up to four distributors of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage of net asset value.

**FILING DATES:** The application was filed on October 27, 1999, and was amended on December 21, 1999.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 28, 2000, 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 a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609; Applicants, 50 Rowes Wharf, Fourth Floor, Boston, Massachusetts 02110-3328.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942-0574 or George J. Zornada, 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 at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

#### Applicants' Representations

1. The Funds are registered under the Act as closed-end, diversified management investment companies and organized as Massachusetts business trusts. The investment objective of HQH is long-term capital appreciation through investment in securities of companies in the healthcare industry. The investment objective of HQL is long-term capital appreciation through investment in securities of companies in the life sciences industry. Hambrecht & Quist Capital Management Incorporated, an investment adviser registered under the Investment Adviser Act of 1940, serves as each Fund's investment adviser.

2. On May 10, 1999, each Fund's board of trustees ("Board"), adopted a managed distribution policy ("distribution") with respect to the Fund's common shares. Each Fund's shares are listed and traded on the New York Stock Exchange. Under the Distribution Policy, each Fund intends to make quarterly distributions to its shareholders equal to 2.0% of the Fund's net asset value ("NAV"). The Boards, including a majority of the members who are not "interested persons" of the Funds, as defined in section 2(a)(19) of the Act, concluded that adoption of the Distribution Policy would be in the best interests of the Funds' shareholders. Applicants state that, while at times since inception each Fund's shares have traded at a premium, each Fund's shares generally have traded at a discount to NAV. In this regard, the Boards took into account empirical evidence that, in some cases, market price discounts to NAV have narrowed upon adoption of similar

distribution policies by other closed-end investment companies.

3. Each Fund requests relief to permit it, so long as it maintains in effect the Distribution Policy, to make up to four long-term capital gains distributions in any one taxable year.

#### Applicants' Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once very twelve months. Rule 19b-1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(c) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b-1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b-1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicants assert that rule 19b-1, by limiting the number and amount of net long-term capital gains distributions that each Fund may make with respect to any one year, may prevent the normal operation of the Distribution Policy whenever the Fund's realized net long-term capital gains in any year exceed the total of the long-term capital gains that under rule 19b-1 may include such capital gains. As a result, applicants state that each Fund might have to combine the third and fourth quarter dividends to comply with rule 19b-1, thereby disturbing the regularity of the dividend policy or fund the distributions with a return of capital. Applicants further state that the long-term capital gains in excess of the fixed distributions permitted by rule 19b-1 then would have to be added to one of the permitted capital gains distributions, thus exceeding the total minimum amount called for by the Distribution Policy, or be retained by each Fund, with each Fund paying taxes on the long-term capital gains that are retained. Applicants believe that the application of rule 19b-1 to its Distribution Policy may create pressure to limit the realization of long-term capital gains to the total amount of the fixed quarterly distributions that under the rule may include long-term capital gains.

3. Applicants submit that one of the concerns leading to the adoption of section 19(b) and rule 19b-1 was that

shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state that each Fund's Distribution Policy, including the fact that quarterly dividends may include returns of capital to the extent that net investment income and net long-term capital gains are insufficient to meet the distribution obligation, will be described in periodic communications to its shareholders. Applicants further state that in accordance with rule 19a-1 under the Act, a separate statement showing the source of the distribution (investment company taxable income, net long-term realized capital gains or return of capital) will accompany any distribution (or the confirmation of its reinvestment under each Fund's dividend reinvestment plan) that is not from the Fund's net investment income. In addition, a statement showing the amount and character of the distributions during the year will be included with each Fund's IRS Form 1099-DIV and Form 1099-B reports, which will be sent to each shareholder of record who received distributions during the year (including shareholders who sold shares during the year).

4. Applicants submit that another concern underlying section 19(b) and rule 19b-1 is that frequent capital gains distributions could facilitate improper fund distribution practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming dividend ("selling the dividend"), where the dividend results in an immediate corresponding reduction in NAV and is in effect a return of the investor's capital. Applicants state that this concern does not apply to closed-end investment companies such as the Funds which do not continuously distribute shares. Applicants also state that the condition to the requested relief would further assure that the concern about selling the dividend would not arise in connection with a rights offering by the applicants. Applicants state that any transferable rights offering by either Fund will comply with the guidelines of the Commission and its staff. In making the requisite findings in connection with such an offering, the Boards will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Applicants also state that any such offering will also comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Applicants state that increased administrative costs also are a concern

underlying section 19(b) and rule 19b-1. Applicants assert that the anticipated benefits to the Fund's shareholders are such that each Fund will continue to make quarterly distributions regardless of what portion is composed of long-term capital gains.

6. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or any rule under the Act 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. For the reasons stated above, the applicants believe that the requested relief satisfies this standard.

#### **Applicant's Condition**

Each Fund agrees that the order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Fund of its shares other than:

(i) A rights offering with respect to the Fund's shares to holders of the Fund's shares, in which (a) shares are issued only within the six-week period immediately following the record date of a quarterly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising the rights will not be entitled to receive such dividend, and (c) the Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of the Fund;

unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42268; File No. S7-24-89]

### **Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc. and the Philadelphia Stock Exchange, Inc.**

December 23, 1999.

#### **I. Introduction**

On November 29, 1999, the National Association of Securities Dealers, Inc. ("NASD"), on behalf of itself and the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposal to extend the operation of a joint transaction reporting plan ("Plan")<sup>1</sup> for Nasdaq/National Market ("Nasdaq/NM") (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.<sup>2</sup> The proposal would extend the effectiveness of the Plan, as amended by Revised Amendment No. 9, as defined in footnote 3, through June 30, 2000.<sup>3</sup> The

<sup>1</sup> See Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated November 29, 1999 ("November 1999 Extension Request"). The November 1999 Extension Request also requests that the Commission continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1-2 and 11Aa3-1 under the Securities Exchange Act of 1934, as amended ("Act"). 15 U.S.C. 78a *et seq.* The signatories to the Plan are the Participants for purposes of this release, however, the BSE joined the Plan as a "limited participant" and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange, Inc. ("Amex") was a Participant but withdrew its participation from the Plan in August 1994.

<sup>2</sup> Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges ("UTP") under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of the Section 12(f) requirement, see November 1995 Extension Order, *infra* note 7.

<sup>3</sup> On March 18, 1996, the Commission solicited comment on a revenue sharing agreement among the Participants. See March 1996 Extension Order, *infra* note 7. Thereafter the Participants submitted certain technical revisions to the revenue sharing