portfolio unless such Plan executes an agreement with the relevant Trust governing participation in such portfolio that includes the conditions set forth to the extent applicable. A Plan or Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any portfolio.

14. Any shares of a portfolio purchased by First Trust or its affiliates will be automatically redeemed if and when First Trust's advisory agreement terminates, to the extent required by applicable Treasury regulations. Neither First Trust nor its affiliates will sell such shares of the portfolios to the public.

**Conclusion**

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c) of the 1940 Act, are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–33262 Filed 12–28–00 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–24794; File No. 812–12124]**

## Market Street Fund, Inc., et al.; Notice of Application

December 21, 2000.

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

**ACTION:** Notice of application for an order of exemption pursuant to Section 17(b) of the Investment Company Act of 1940 (the ''Act'') from Section 17(a) of Act.

*Applicants:* Market Street Fund, Inc. (the ''Fund''), Market Street Fund (the ''Trust''), Provident Mutual Life Insurance Company (''PMLIC''), Market Street Investment Management Company (''MSIM''), and Providentmutual Life and Annuity Company of America (''PLACA'').

*Summary of Application:* Applicants seek an order exempting certain transactions from the provisions of Section 17(a) of the Act to the extent necessary to permit the reorganization of the Fund, a Maryland corporation, into a Delaware business trust. At the conclusion of the transactions, the assets and liabilities currently held in the Money Market, Equity 500 Index, Growth, Bond, Managed, Aggressive Growth, International, All Pro Large Cap Growth, All Pro Small Cap Growth, All Pro Large Cap Value, and All Pro Small Cap Value Portfolios (collectively, the ''Fund Portfolios'') of the Fund will be held by the corresponding portfolios of the Trust (collectively, the ''Trust Portfolios'') which previously will have had no operations. Because of certain affiliations, Applicants may not rely on Rule 17a–8 under the Act.

*Filing Dates:* The application was filed on May 19, 2000, and amended and restated on December 20, 2000.

*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 Secretary of the Commission 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 16, 2001, 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 Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. For the Applicants: James A Bernstein, Esq., Market Street Fund Inc., Market Street Trust, 103 Bellevue Parkway, Wilmington, Delaware 19809; Provident Mutual Life Insurance Company, Market Street Investment Management Company, 1000 Chesterbrook Boulevard, Berwyn, Pennsylvania 19312–1181; Michael Berenson, Esq., Jorden Burt Boros Cicchetti Berenson & Johnson LLP, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington, DC 20007–0805; Providentmutual Life and Annuity Company of America, 300 Continental Drive, Newark, Delaware 19713–4399.

**FOR FURTHER INFORMATION CONTACT:** Keith A. O'Connell, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

**Applicant's Representations**

1. The Fund, a Maryland corporation incorporated on March 21, 1985, is an open-end, management investment company registered under the Act. Eleven of the twelve portfolios will participate in the reorganization: the Money Market, Equity 500 Index, Growth, Bond, Managed, Aggressive Growth, International, All Pro Large Cap Growth, All Pro Small Cap Growth, All Pro Large Cap Value, and All Pro Small Cap Value Portfolios (each, a ''Portfolio''). The Fund receives investment advisory services from Sentinel Advisors Company (''SAC'')[1] for the Money Market, Bond, Growth, Managed, and Aggressive Growth Portfolios and from Market Street Investment Management Company (''MSIM'') for the Equity 500 Index, International, All Pro Large Cap Growth, All Pro Small Cap Growth, All Pro Large Cap Value, and All Pro Small Cap Value Portfolios. MSIM retains various sub-advisers that are responsible for the day-to-day decision making for the portfolios for which it serves as investment adviser.

2. The Trust, a Delaware business trust, was created on October 30, 2000. On or about January 26, 2001, the Trust will adopt the Fund's registration statement under the Act as an open-end management investment company. The Trust will offer 11 investment portfolios corresponding to the various portfolios of the Fund, excluding the Sentinel Growth Portfolio. The Trust will receive investment advisory services from MSIM for all of the Trust Portfolios. Each of the Trust Portfolios into which the Fund Portfolios will be merged has the same investment objective as the corresponding Fund Portfolios. In addition to the reorganization, shareholders of the Fund Portfolios are being asked to approve by proxy (1) A proposal to change the investment approaches of and rename certain Portfolios and to change the investment objective of the Growth Portfolio, (2) a proposal for a new investment advisory agreement between the Fund and MSIM for all of its Portfolios, and (3) a proposal to permit MSIM to enter and materially amend subadvisory agreements for certain Portfolios without shareholder approval.

[1] SAC is registered as an investment adviser under the Investment Advisers Act of 1940 and is a Vermont general partnership indirectly wholly owned by PMLIC, National Life Insurance Company and Penn Mutual Life Insurance Company.

3. The shares of the Fund are sold generally only to insurance companies and their separate accounts as the underlying investment media for variable life insurance and variable annuity contracts issued by such insurance companies. The shares of the Trust, similarly, will be sold generally only to insurance companies and their separate accounts as the underlying investment media for variable life insurance and variable annuity contracts issued by such insurance companies. As of November 28, 2000, PMLIC had contributed seed capital equal to approximately 34% of the All Pro Large Cap Value Portfolio, 6% of the All Pro Small Cap Growth Portfolio, and 16% of the All Pro Small Cap Value Portfolio. These seed capital holdings represent the only shares held by PMLIC and PLACA other than through their separate accounts.

4. As of December 20, 2000, PMLIC, PLACA, and National Life Insurance Company (''NLIC'') and certain of their separate accounts are the only shareholders of the Fund Portfolios. As the primary holders of the Portfolio's shares, PMLIC, PLACA, and NLIC currently control the Fund. On November 27, 2000, NLIC received an order of approval from the Commission pursuant to Section 26(b) of the Act permitting NLIC to substitute shares of various investment companies for shares of the various Fund Portfolios currently held by its separate accounts on behalf of its contract owners. The substitution took place at the close of business on November 30, 2000, with respect to all of the Fund Portfolios except the Bond and Managed Portfolios. SAC will resign on or about January 26, 2001, as the investment adviser to the Money Market, Bond, Growth, Managed and Aggressive Growth Portfolios. On November 3, 2000, the Fund's Board of Directors and the Trust's Board of Trustees approved MSIM as investment adviser to these five Portfolios. As a result of the NLIC substitution, NLIC and its separate accounts continue to be shareholders in only two of the Fund Portfolios (the Managed and Bond Portfolios). PMLIC, PLACA, NLIC, and their separate accounts, are the only shareholders of the Fund Portfolios, and upon consummation of the Reorganization (defined below), will be the only shareholders of the Trust Portfolios. As stated above, PMLIC has contributed seed capital to certain portfolios and therefore beneficially owns shares in such portfolios. Following the Reorganization, PMLIC and PLACA will control the Trust as the primary shareholders of the Trust Portfolios.

5. The Fund plans to reorganize and redomesticate from a Maryland corporation into a Delaware business trust (the ''Reorganization''). The Reorganization will take place pursuant to the terms and conditions stated in the Agreement and Plan of Reorganization, Redomestication and Pro Rata Distribution (the ''Plan''). The Reorganization process can be summarized as follows. First, a Delaware business trust has been created. If shareholders owners approve the Reorganization, the Fund will assign, transfer and convey the assets of each of the Fund Portfolios to the corresponding series of the Trust. Each Trust Portfolio will acquire all of the assets and liabilities of each corresponding Fund Portfolio in exchange for full and fractional shares of beneficial interest of the Trust Portfolio. The shares of the Trust Portfolios will have an aggregate net asset value equal to the aggregate net asset value of the shares of the corresponding Fund Portfolios immediately prior to the Reorganization. The value of the assets will be determined in accordance with the current prospectus and statement of additional information of the Fund and Trust.

6. In connection with the Reorganization, shares of each Trust portfolio will be distributed to holders of the shares of the respective corresponding Fund Portfolio. The number of full and fractional shares of a Trust Portfolio received by a shareholder of the corresponding Fund Portfolio will be equal in value to the value of that shareholder's shares of the corresponding Fund Portfolio immediately prior to the Reorganization as of the close of regularly scheduled trading on the New York Stock Exchange on the closing date of the Reorganization. The Reorganization is intended to be a reorganization within the meaning of Section 368(a)(1) of the United States Internal Revenue Code of 1986, as amended. The Reorganization will not result in the merger or reorganization of the various separate accounts that hold shares of the Fund.

7. On April 24, 2000, the Board of Directors of the Fund authorized the Fund's officers to take steps necessary to effect the Reorganization. On November 3, 2000, both the Board of Directors of the Fund and the Board of Trustees of the Trust (together, the ''Board'') authorized and approved the Reorganization. The Board's vote and findings were recorded in the minutes of the November 3 Board Meeting. The Reorganization will be submitted to a vote of the shareholders of the Fund Portfolios for approval at a Special Meeting of Shareholders scheduled to be held on January 12, 2001, in accordance with Maryland law, the Act and Commission rules. However, at any time prior to the Reorganization, the Board may decide that it is in the best interest of the Fund and its shareholders not to reorganize into the Trust.

8. The Reorganization of the Fund from a Maryland corporation to a Delaware business trust will not affect the advisory fees or expenses, including existing fee waivers or expense reimbursements, if any, of the Trust Portfolios. These fees and expenses may change as a result of other proposals that contract owners are being asked to approve. No sales charge will be assessed in connection with the Reorganization. The expenses of the Reorganization, including any brokerage commissions, if any, will be borne by PMLIC.

9. The Applicants state that the principal purpose of the Reorganization is to take advantage of the benefits Delaware business trust law offers mutual funds.

10. In reaching the decision to approve the Reorganization and to recommend that shareholders approve it, the Board concluded that the Reorganization is in the best interests of each Fund Portfolio and each corresponding Trust Portfolio, as well as in the best interests of the shareholders and the contract owners whose contract values are invested in shares of the Fund Portfolios and will be invested in the corresponding Trust Portfolios, and that the interests of existing shareholders and contract owners will not be diluted as a result of the Reorganization. The Board considered a number of factors including the advantages of operating under Delaware law, the fact that the share prices will not be affected by the Reorganization, the tax-free treatment at the federal level of the Reorganization, and the continued protection of shareholders from liability for the Trust's obligations.

11. The Reorganization is subject to certain conditions precedent, including (1) shareholder approval of the Reorganization, (b) effectiveness of the Trust's registration statement, and (c) the order requested herein.

**Applicant's Legal Analysis**

1. Section 17(a) of the Act provides in part that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell to such

investment company or to purchase from such investment company any securities or other property.

2. Section 2(a)(3) of the Act defines the term affiliated persons of another person, in part, as:

> (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; * * * (E) if such other person is an investment company, any investment adviser thereof or any member of any advisory board thereof * * *

Section 2(a)(9) of the Act defines control in part to mean ''the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.''

3. The Applicants state that as of the date of the Reorganization, all of the outstanding shares of the Fund Portfolios will be legally owned by PMLIC, PLACA and NLIC, and their separate accounts and PMLIC will beneficially own shares of certain Portfolios. All of the outstanding shares of the Trust Portfolios will, immediately prior to the Reorganization, be legally owned by PMLIC. The Applicants state that as a result of these relationships, the Fund Portfolios and the Trust Portfolios may be deemed to be under common control and, therefore, affiliated persons of each other for the purposes of the prohibitions set forth in Section 17(a) of the Act.

4. In addition, the Applicants state that MSIM currently serves as investment adviser to the Equity 500 Index, International, All Pro Large Cap Growth, All Pro Small Cap Growth, All Pro Large Cap Value, and All Pro Small Cap Value Portfolios of the Fund, and will serve as investment adviser for the corresponding Trust Portfolios. SAC gave formal notice of its intent to resign effective on or around January 26, 2001, as investment adviser to the Fund Portfolios that it currently manages. As noted above, the Board has already approved MSIM as investment adviser to these five portfolios. All of the portfolios, except the Money Market Portfolio, will implement a manager-of-managers approach to management. As a result of these relationships, the Applicants state that these Fund Portfolios and the corresponding Trust Portfolios might also be deemed to be affiliated persons of affiliated persons of each other. Thus, the Applicants state that, absent exemptive relief, consummation of these portions of the Reorganization could result in a violation of Section 17(a).

5. Section 17(b) of the Act provides that, notwithstanding Section 17(a), a person may file with the Commission an application for an order exempting a proposed transaction from one or more of the prohibitions of section 17(a). The Commission shall grant such application if evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable, and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and in reports filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act. Applicants request an order of the Commission, pursuant to Section 17(b) of the Act, exempting them from the provisions of Section 17(a) of the Act.

6. Rule 17a–8 under the Act provides, in part, that a merger of registered investment companies which are affiliated persons solely by reason of having a common investment adviser, director, and/or officers is exempt from the prohibitions of Section 17(a), provided that the board of directors of each affiliated company in question, including a majority of independent directors/trustees, determines: (1) That participation in the transaction is in the best interests of that registered company and (2) that the interests of existing shareholders of that registered company will not be diluted as a result of the merger.

7. The Applicants state that, due to the fact that 100% of the shares of the Fund and Trust Portfolios are legally owned by PMLIC and PLACA, through their separate accounts and for general investment purposes, the exemption provided by Rule 17a–8 may not be available with respect to the proposed transactions. Applicants assert that, while the affiliations involved may not be, as a substantive matter, within the scope of the express relief provided by Rule 17a–8, the Reorganization is consistent with the routine mergers that otherwise do not require exemptive relief, as well as with the spirit of Rule 17a–8. The Applicants state that the additional affiliations presented here do not implicate any greater danger of overreaching than do the affiliations within the scope of Rule 17a–8, and are rendered of less concern because contract owners participating in registered separate accounts holding shares of the Fund Portfolios at the record date will have the opportunity to provide voting instructions on the Reorganization and that all shares owned by PMLIC and PLACA will be voted in proportion to voting instructions received from such contract owners.

8. The Applicants state that the Board has reviewed the transactions proposed in light of the determinations required by Rule 17a–8. The Board, including the independent directors/trustees, has reviewed the contemplated transactions and unanimously determined that the transactions are in the best interests of the shareholders of the Fund and Trust Portfolios, and that the transactions are in the best interests of the contract owners with values currently allocated to the Fund Portfolios and ultimately allocated to the Trust Portfolios. The Board, including the independent directors/trustees, has also determined that the interests of existing shareholders and contract owners will not be diluted as a result of the Reorganization. The Board's vote and findings were recorded in the minutes of the November 3 Board Meeting. The Applicants state that, accordingly, if Rule 17a–8 were available, its conditions would be satisfied.

9. Applicants assert that the requirements of Section 17(b) set forth above are met by the proposed transaction. Applicants note that the Plan will provide that the exchange of assets and liabilities, as described above, of the Fund Portfolios for shares of the Trust Portfolios shall be accomplished on the basis of the net asset value of the respective Portfolios, and thus the Reorganization will not involve dilution of the interests of existing shareholders or contract owners. The method for determining the number of shares of the Fund Portfolios for which shares of the corresponding Trust Portfolios will be exchanged is set out in the Plan and will be summarized in the proxy statement delivered to contract owners.[2] Applicants assert that the terms of the proposed transactions are fair and reasonable and do not involve overreaching on the part of any person concerned.

10. Applicants assert that the proposed transactions are consistent with the policies of the Fund, of the Trust, and of the individual portfolios involved in the proposed transaction.

[2] The preliminary proxy statement was filed with the Commission on November 17, 2000, and the definitive proxy statement was filed on December 1, 2000.

The Applicants state that each of the Trust Portfolios into which the Fund Portfolios will be merged has the same investment objectives as the corresponding Fund Portfolios. In addition, the Applicants state that although the investment approaches and names of certain of the Fund Portfolios may change, subject to shareholder approval, based on proposals disclosed in the proxy statement, these changes are distinct from those caused by the Reorganization.

11. Applicants assert that the proposed transaction is consistent with the general purposes of the Act. The transactions must receive the approval of a majority of the outstanding voting shares of the Fund. Contract owners have received a proxy statement containing all material disclosures. Each contract owner will be entitled to instruct how the number of shares related to his or her interest in the separate accounts will be voted. All other shares will be mirrored voted in proportion to the shares voted in accordance with those instructions.

**Conclusion**

For all the reasons stated above, Applicants assert that the terms of the contemplated transactions meet all of the requirements of Section 17(b) of the Act. Accordingly, Applicants request that the Commission issue an order exempting the proposed transactions from the provisions of Section 17(a) of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43742; File No. SR–CHX–00–37]**

## Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Incorporated, Relating to the Exchange's SuperMAX 2000 Price Improvement Program

December 19, 2000.

### I. Introduction

On November 6, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 that would amend CHX Article XX, Rule 37 to add a new price improvement algorithm entitled SuperMAX 2000, applicable to all issues trading in decimal price increments. On November 16, 2000, the CHX filed an amendment to the proposal.[3] Notice of the proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on November 29, 2000.[4] The Commission received no comments on the proposal. On December 19, after the close of the 15-day comment period, the CHX again amended the proposed rule change.[5] This order approves the proposed rule change and Amendment Nos. 1 and 2, on an accelerated basis.

### II. Description of the Proposal

According to the CHX, the primary purpose of the proposed rule change is to increase the number of orders that are eligible for price improvement, and to afford CHX specialists the opportunity to provide price improvement alternatives equal to or more favorable than existing alternatives.

By way of background, on May 22, 1995, the Commission approved a proposed CHX rule change that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[6] That order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options under this new rule.

SuperMAX, Enhanced SuperMAX, SuperMAX Plus and Derivative SuperMAX are four existing CHX programs within the MAX system that use computerized algorithms to provide automated price improvement. The Commission has approved each of these price improvement programs on a permanent basis.[7]

The Exchange believes that, for it to remain competitive, its specialists must be able to swiftly and meaningfully respond to the price improvement considerations articulated by the Exchange's order sending firms and their customers. To this end, the Exchange proposes to change its existing price improvement program.

At present, Exchange specialists may voluntarily participate, on an issue-by-issue basis, in one of the four price improvement programs referenced above. Each of the existing price improvement programs provides for a fixed amount of price improvement when the national BBO spread meets certain spread parameters (*e.g.*, in SuperMAX plus, $.01 on a BBO spread of $.03 on orders from 100 to 199 shares).

Under the proposed SuperMAX 2000 program, customers would be guaranteed the same minimum amount of price improvement they would receive under SuperMAX Plus (*i.e.,* $.01 on a spread of $.03 on orders of 100 shares) if a specialist has enabled SuperMAX 2000; in addition, specialists would be permitted to provide further automated price improvement on an issue-by-issue basis. This opportunity for additional price improvement would exist for all orders of 100 shares or greater.

The Exchange believes that SuperMAX 2000 will provide CHX specialists with the flexibility to better respond to customer price improvement requirements in a decimal pricing environment. The proposal contemplates equality among order-sending firms (and their customers) by mandating that CHX specialists provide additional price improvement on an issue-by-issue basis; specialists would not be permitted to distinguish among order-sending firms when designating price improvement levels.

The Exchange also believes that SuperMAX 2000 would simplify the Exchange's existing price improvement framework by eliminating multiple price improvement programs with different names, requirements and

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

[2] 17 CFR 240.19b–4.

[3] *See* November 15, 2000 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Joseph Morra, Special Counsel, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, the CHX made a minor, technical correction to the language of proposed Rule 37(h).

[4] Securities Exchange Act Release No. 43577 (November 16, 2000), 65 FR 71164.

[5] *See* December 18, 2000 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Joseph Morra, Special Counsel, Division, SEC (''Amendment No. 2''). In Amendment No. 2, the CHX made further minor, technical corrections to the language of proposed Rule 37(h). The Commission notes that neither amendment made substantive changes to the proposal.

[6] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (SR–CHX–95–08).

[7] *See* Securities Exchange Act Release Nos. 40017 (May 20, 1998), (63 FR 29277 (May 28, 1998) (SR–CHX–98–09) and 40235 (July 17, 1998), 63 FR 40147 (July 27, 1998) (SR–CHX–98–09) (orders approving revised SuperMAX and Enhanced SuperMAX algorithms); 41480 (June 4, 1999), 64 FR 32570 (June 17, 1999) (SR–CHX–99–04) (order approving revised SuperMAX Plus algorithm); and 42565 (March 22, 2000), 65 FR 16442 (March 28, 2000) (SR–CHX–99–24) (order approving Derivative SuperMAX algorithm).