an Order should, therefore, be granted. Accordingly, Applicants request an Order pursuant to Sections 6(c), 17(b) and 26(b) of the 1940 Act approving the substitution of shares of the Pacific Growth Fund with shares of the International Fund.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–6352 Filed 3–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC—24887; 813–290]

BMO Nesbitt Burns Corp.; Notice of Application

March 7, 2001.

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

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1949 (the ''Act'') exempting applicant from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)), section 30 (except for certain provisions of paragraphs (a), (b), (e), and (h)), and sections 36 through 53, and the rules and regulations under the Act.

SUMMARY OF APPLICATION: Applicant requests an order to exempt certain limited partnerships or limited liability companies (each a ''Partnership'') formed for the benefit of key employees of BMO Nesbitt Burns Corp. (''BMO NB'') and its affiliates from certain provisions of the Act. Each Partnership will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act.

Applicant: BMO NB.

FILING DATES: The application was filed on August 18, 2000, and amended on February 12, 2001. 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 April 2, 2001, 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, D.C. 20549–0609. Applicant, Michael G. Zeiss, BMO Nesbitt Burns Corp., 430 Park Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Maura S. McNulty, Senior Counsel, at (202) 942–0621, or May 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 at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. BMO NB, a Delaware corporation, is a full-service investment bank serving the financial needs of individual, institutional, corporate and government clients. BMO NB is an indirect subsidiary of the Bank of Montreal, Canada's oldest bank with over Cdn. $200 billion in assets. BMO NB and its affiliates (as defined in rule 12b–2 of the Securities Exchange Act of 1934 (the ''Exchange Act'')) are referred to in this notice collectively as the ''BMO NB Group.''

2. Applicant proposes to establish Partnerships for the benefit of eligible current and former key employees, officers, directors, and persons on retainer of the BMO NB Group. The Partnerships would be part of a program designed to create investment opportunities that are competitive with those at other financial institutions and brokerage and investment banking firms for employees and to facilitate the recruitment of high caliber employees. Participation in a Partnership will be voluntary.

3. Each Partnership will be a limited partnership, or, alternatively, a limited liability company, business trust or other entity organized under the laws of Delaware or another state. The BMO NB Group also may form a parallel Partnership organized under the laws of Canada to create the same investment opportunities for its Canadian employees as would be available to its U.S. employees. The Partnerships will be operated in accordance with their respective limited partnership agreements or other organizational documents (each, a ''Partnership Agreement''). Each Partnership will be formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, management investment company which may be diversified or non-diversified.

4. Each Partnership will be managed, operated and controlled by its general partner, managing member of similar entity (''General Partner''). Each General Partner will be an entity within the BMO NB Group. The General Partner or another entity in the BMO NB Group will serve as investment adviser (''Investment Adviser'') to the initial Partnership. The Investment Adviser will be (a) registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), (b) exempt from Advisers Act registration requirements by virtue of section 203(b)(3) of the Advisers Act, or (c) excluded from the definition of investment adviser under the Advisers Act because it is a bank or a bank holding company (as defined in the Bank Holding Company Act of 1956). Any Investment Adviser of any future Partnership also will be an entity within the BMO NB Group.

5. With respect to some or all Partnerships, the Investment Adviser will be permitted to delegate certain of its responsibilities relating to the acquisition, management and disposition of Partnership investments to one or more sub-investment advisers, each of which will be an entity within the BMO NB Group (''Affiliated Subadviser'') and registered under the Advisers Act if required under applicable law. If the Investment Adviser elects to enter into any side-by-side investment with an unaffiliated entity, the Investment Adviser will be permitted to engage as sub-investment adviser the unaffiliated entity (''Unaffiliated Subadviser'' and, together with the Affiliated Subadviser, a ''Subadviser'') responsible for the management of such side-by-side investment.

6. Interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (''Securities Act''), or Regulation D under the Securities Act, and will be sold only to (a) current and former key employees, officers, directors, and persons on retainer of the BMO NB Group (''Eligible Employees''), (b) qualified family members who are spouses, parents, children, spouses of children, brothers, sisters, and grandchildren of Eligible Employees (''Qualified Family

Members''), or (c) trusts or other investment vehicles established solely for the benefit of Eligible Employees or Qualified Family Members ''Qualified Investment Vehicles'' and, collectively with Qualified Family Members, ''Qualified Participants'').

7. Qualified Investment Vehicles must meet the standards for an ''accredited investor'' under rule 501(a) of Regulation D. Eligible Employees and their Qualified Family Members will be individuals who satisfy certain financial sophistication standards, will be capable of understanding and evaluating the merits and risks of participation in a Partnership and able to bear the economic risk of such participation, including a complete loss of his or her investment. Eligible Employees and Qualified Family Members will meet the standards for an ''accredited investor'' under rule 501(a)(6) of Regulation D, except that a maximum of 35 Eligible Employees who are sophisticated investors but who do not meet the definition of an accredited investor may become limited partners (''Limited Partners'') if each of them falls into one of the following categories: (a) Eligible Employees who (i) have a graduate degree in business, law or accounting, (ii) have a minimum of five years of consulting, investment banking or similar business experience, and (iii) will have had reportable income from all sources (including any profit shares or bonus) in the calendar year immediately preceding the Eligible Employee's admission as a Limited Partner in excess of $120,000 and will have a reasonable expectation of reportable income of at least $150,000 in the years in which the Eligible Employee invests in a Partnership [1], or (b) Eligible Employees who are ''knowledgeable employees'' as defined in rule 3c–5 under the Act of the Partnership (with the Partnership treated as though it were a ''covered company'' for purposes of the rule).

8. The specific investment objectives and strategies for a particular Partnership will be set forth in the private placement memorandum relating to the Interests offered by the Partnership, and each Eligible Employee and Qualified Participant will receive a copy of the private placement memorandum in connection with their investment in a Partnership. The terms of a Partnership will be fully disclosed to each Eligible Employee at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to the Limited Partners as soon as practicable after the end of its fiscal year. In addition, a report will be sent to each Limited Partner setting forth the information with respect to his or her share of income, gains, losses, credits and other items for federal and state income tax purposes, resulting from the operation of the Partnership during that year.

9. Interests in a Partnership will be non-transferable except with the express consent of the General Partner and then only to Eligible Employees or Qualified Participants. No fee of any kind will be charged in connection with the sale of Interests.

10. BMO NB or an entity within the BMO NB Group, or any Eligible Employee or Qualified Participant designated thereby, may have the right, but not the obligation, to acquire the Interest of a Limited Partner upon the termination of the Limited Partner's employment with an entity within the BMO NB Group with or without cause, including as a result of the death, disability, or voluntary resignation of the Limited Partner, or upon the Limited Partner's bankruptcy. Each private placement memorandum will describe whether the BMO NB Group will be required or have the option to acquire the Interest of a Limited Partner upon the termination of the Limited Partner's employment. In this regard, the purchase price for the Interest will be at least equal to the Interest's fair market value (as determined by the BMO NB Group in good faith and in accordance with its customary valuation procedures).

11. An entity within the BMO NB Group may purchase Interests, which it may offer to new Eligible Employees joining the BMO NB Group after the closing of a Partnership or which it may award to Eligible Employees as bonus or similar compensation. These Interests will be acquired from the Partnership in the same manner of payment, at the same time and at the same price as Interest purchased by Limited Partners. An entity within the BMO NB Group may sell the Interests it has so acquired to any Eligible Employee or Qualified Participant at any time during the life of the Partnership at a price no greater than the net asset value of the Interests on the previous appraisal date as set forth in the Partnership Agreement.

12. The purchase price for Interests may be payable in full upon subscription or in installments as determined by the General Partner. Eligible Employees may be offered the opportunity to acquire Interests pursuant to the arranging of recourse and nonrecourse loans.

13. In an investment program that provides for vesting provisions, such as vesting of interests purchased with the proceeds of loans, an Eligible Employee's Interest at the commencement of the program will be treated as being entirely ''unvested'' and ''vesting'' will occur either through the passage of a specified period of time or upon the occurrence of a specified event. The portion of an Interest that is unvested at the time of an Eligible Employee's employment termination, and the portion that is vested in the event of certain specified events, may be subject to repurchase by a BMO NB Group entity or reallocated to other Limited Partners in the Partnership.

14. No Partnership will acquire any security issued by a registered investment company if, immediately after such acquisition, the Partnership would own more than 3% of the outstanding voting stock of the registered investment company.

15. The Investment Adviser may be paid an advisory fee for its services to a particular Partnership, which may be determined as a percentage of assets under management or aggregate commitments. In addition, an Investment Adviser and/or Subadviser may be entitled to a performance-based fee or ''carried interest.'' [2] The General Partner or the Investment Adviser may charge the Partnership any expenses charged by a Subadviser, legal and accounting fees, administrative expenses and other operating expenses.

16. A Partnership will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own securities of the Partnership (other than short-term paper). If an entity within the BMO NB Group makes loans to any Partnership or Limited Partner, the lender will be entitled to receive interest at a rate

[1] In addition, such Eligible Employees in this category will not be permitted to invest in any year more than 10% of his or her income from all sources for the immediately precedng year in the aggregate in a Partnership and in all other Partnerships in which that Eligible Employee has previously invested.

[2] A ''carried interest'' is an allocation to the Investment Adviser or Subadviser based on net gains in addition to the amount allocable to the Investment Adviser or Subadviser that is in proportion to its capital contributions, provided, however, that no Unaffiliated Subadviser will beneficially own any outstanding securities of any Partnership. Depending on whether the Investment Adviser or Subadviser is registered as an investment adviser under the Advisers Act any carried interest will be charged only if permitted by rule 205–3 under the Advisers Act (in the case of an Investment Adviser or Subadviser registered under the Advisers Act) or will comply with section 205(b)(3) of the Advisers Act (with the Partnership treated as though it were a ''business development company'' solely for the purpose of that section) in the case of an Investment Adviser or Subadviser not registered under the Advisers Act.

which is permissible under applicable banking or tax regulations, provided that the rate will be no less favorable to the borrowers than the rate obtainable on an arm's length basis. Any indebtedness of the Partnership will be the debt of the Partnership and without recourse to the Limited Partners.

Applicant's Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' security company, in relevant part, as any investment company all of whose securities are beneficially owned: (a) By current or former employees, or persons on retainer, of one or more affiliated employers; (b) by immediate family members of such persons; or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicant requests an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicant requests an exemption from section 17(a) to permit each Partnership to: (a) Purchase portfolio investments from or sell portfolio securities to BMO NB, or any other affiliated person of a Partnership, or an affiliated person thereof (an ''Affiliated Entity''), on a principal basis; (b) purchase interests or property in a company or other investment vehicle in which BMO NB, or an Affiliated Entity, already owns securities, or, where such company or other investment vehicle is otherwise affiliated with BMO NB or a Partnership; (c) sell, put or tender, or grant options in securities or interest in a company or other investment vehicle back to such entity, where that entity is affiliated with BMO NB or an Affiliated Entity; (d) participate as a selling security holder in a public offering that is underwritten by BMO NB or an Affiliated Entity or in which BMO NB or an Affiliated Entity acts as a member of the underwriting or selling group; (e) invest in companies, partnerships or other investment vehicles offered, sponsored or managed by BMO NB or an Affiliated Entity (referred to collectively as ''BMO NB Sponsored Vehicles''), or to purchase securities from BMO NB Sponsored Vehicles; (f) invest in securities of, or lend money to entities for which BMO NB or an Affiliated Entity has performed investment banking or other services and from which they may have received fees; and (g) purchase securities that are underwritten by BMO NB or an Affiliated Entity (including a member of a selling group) on terms at least as favorable to the Partnership as those offered to investors other than affiliated persons of BMO NB.

4. Applicant states that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicant states that the Limited Partners in each Partnership will be fully informed of the extent of the Partnership's dealings with affiliated persons and, as professionals employed in the investment banking and financial services businesses, will be able to understand and evaluate the attendant risks. Applicant asserts that the community of interest among the Limited Partners and BMO NB Group will provide the best protection against any risk of abuse. Applicant acknowledges that the requested relief will not extend to any transactions between a Partnership and an Unaffiliated Subadviser or an affiliated person of he Unaffiliated Subadviser, or between a Partnership and any person who is not an employee, officer or director of BMO NB or is an entity outside of the BMO NB Group and is an affiliated person of the Partnership as defined in section 2(a)(3)(E) of the Act (''Advisory Person'') or any affiliated person of such person.

5. Section 17(d) of the Act and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicant requests relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Partnership or a company controlled by the Partnership is a participant. Applicant acknowledges that the requested relief will not extend to any transaction in which an Unaffiliated Subadviser or an Advisory Person or an affiliated person of either has an interest.

6. Applicant believes that the participation by the Partnerships in transactions in which affiliated co-investors specified in condition 3 below (''Affiliated Co-Investors'') are also participants is consistent with the provisions, policies and purposes of the Act and is otherwise consistent with the rule 17d–1 standards.

7. Applicant argues that the concern that permitting joint investments with BMO NB or another BMO NB affiliated person, on the one hand, and a Partnership, on the other, might lead to disadvantageous treatment of the Partnership will be mitigated by the fact that BMO NB is acutely concerned with its relationships with the key employees who invest in the Partnerships. Applicant notes that each Partnership will be established to attract and retain highly qualified employees. Applicant states that the Partnerships were conceived and will be organized by the persons who will be investing, directly or indirectly, or are eligible to invest, in the Partnerships, and the Partnerships will not be promoted by persons outside the BMO NB Group, nor will the General Partner seek to profit from fees for investment advice or from the distribution of securities. Finally, applicant contends that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 3 below. Thus, Applicant believes it is unlikely that an Affiliated Co-Invester will enter into a transaction with a Partnership with the intention of disadvantaging the Partnership.

8. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicant requests an exemption from section 17(f) and rule 17f–1 to permit an entity within the BMO NB Group to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicant also requests an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicant believes that, because of the community of interest between the Partnerships and the BMO NB Group and the existing requirements for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicant will comply with all other requirements of rule 17f–1.

9. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicant requests exemptive relief in the case of any Partnership for which an entity within the BMO NB Group is the General Partner to permit a majority of the board of directors or similar body of the General Partner or the entity controlling the General Partner to take actions and make certain determinations set forth in the rule. Applicant states that, because all the directors of the General Partner will be interested persons, a Partnership could not comply with rule 17g–1 without the requested relief. Each Partnership will comply with all other requirements of rule 17g–1.

10. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicant requests an exemption from the provisions of rule 17j–1, except for anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships. The relief requested will extend only to entities within the BMO NB Group and is not requested with respect to any Unaffiliated Subadviser or Advisory Person.

11. Applicant requests an exemption from the requirements in sections 30(a), 30(b) and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicant contends that the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Limited Partners. Applicants requests exemptive relief to the extent necessary to permit each Partnership to report annually to its Limited Partners. Applicant also requests an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4 and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicant asserts that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicant's Conditions

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

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 thereunder (the ''Section 17 Transactions'') will be effected only if the Investment Adviser determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Limited Partners and do not involve overreaching of the Partnership or its Limited Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Limited Partners, the Partnership's organizational documents, and the Partnership's reports to its Limited Partners. In addition, the Investment Adviser will record and preserve a description of the Section 17 Transactions, the Investment Adviser's findings, the information or materials upon which the Investment Adviser's findings are based, and the basis for those finding. All such records will be maintained for the life the Partnership and at least two years thereafter, and will be subject to examination by the SEC and its staff.[3]

2. In connection with section 17 Transactions, the Investment Adviser will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated person of such a person, promoter, or principal underwriter.

3. The Investment Adviser will not invest the funds of any Partnership in any investment in which an Affiliated Co-Investor has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment: (a) Gives the Investment Adviser sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Affiliated Co-Investor. The term ''Affiliated Co-Investor'' means any person who is: (a) An affiliated person of the Partnership; (b) BMO NB or an entity within the BMO NB Group; (c) an officer or director of BMO NB or any other entity within the BMO NB Group; (d) a company, partnership, or other investment vehicle offered, sponsored, or managed by BMO NB or by any other entity within the BMO NB Group; (e) any entity with respect to which BMO NB or another entity within the BMO NB Group provides management, investment management or similar services as manager, investment manager, or general partner or in a similar capacity; or (f) a company in which an officer, director or member of the General Partner acts as an officer, director, or general partner, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (a) To its direct

[3] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

or indirect wholly-owned subsidiary, to any company (a ''Parent'') of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to Qualified Family Members of the Affiliated Co-Investor or a trust established for any Affiliated Co-Investor or any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act; (e) when the securities are government securities as defined in section 2(a)(16) of the Act; (f) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities; or (g) when the Affiliated Co-Investor is an entity with respect to which BMO NB or any other entity within the BMO NB Group provides management, investment management or similar services as manager, investment manager, or general partner or in a similar capacity, if BMO NB or such entity does not have the actual investment discretion over the sale or disposition of the entity's securities.

4. Each Partnership and its General Partner and Investment Adviser will maintain and preserve, for the life of each such Partnership and at least two years thereafter, the accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners, and each annual report of such Partnership required to be sent to the Limited Partners, and agree that all such records will be subject to examination by the SEC and its staff.[4]

5. The General Partner will send or cause to be sent to each Limited Partner who had an interest in the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make or cause to be made a valuation of all of the assets of the Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, as soon as practicable after the end of each fiscal year of each Partnership, the General Partner of such Partnership will send or cause to be sent a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Limited Partners of federal and state income tax returns and a report of the investment activities of the Partnership during such year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a BMO NB Group director, officer, or employee, such individual will not participate in the Investment Adviser's determination of whether or not to effect the purchase or sale.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–6189 Filed 3–12–01; 8:45 am]

BILLING CODE 8010–01–M

[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44043; File No. SR–CBOE–00–61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Change the Capitalization Transfer Fee Applicable to Designated Primary Market Makers

March 6, 2001

I. Introduction

On November 22, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), 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 regarding application of the fee for changes in ownership of Designated Primary Market Makers (''DPMs''). On December 4, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On December 13, 2000, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On January 10, 2001, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as amended, was published in the **Federal Register** on January 22, 2001.[6] The Commission received 21 comment letters on the proposed rule change. Nineteen were submitted by DPMs, one by members of the CBOE Modified Trading System (''MTS'') Committee for the years 2000 and 2001, and one was submitted by a CBOE member.[7] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

In 1999, CBOE instituted a floor-wide DPM system and awarded the appointment of options classes to DPMs at no cost in exchange for a long-term commitment to the Exchange and a fee on subsequent changes of ownership (''transfer fee''). The transfer fee, contained in Interpretation and Policy .02 to CBOE Rule 8.89, is imposed on DPMs that undergo changes in their

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Senior Special Counsel, Division of Market Regulation (''Division''), SEC, dated December 1, 2000.

[4] *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Senior Special Counsel, Division, SEC, dated December 8, 2000.

[5] *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Senior Counsel, Division, SEC, dated December 28, 2000.

[6] *See* Securities Exchange Act Release No. 43839 (January 12, 2001), 66 FR 6715 (''Notice'').

[7] *See* letters to Jonathan G. Katz, Secretary, SEC, from Lawrence J. Blum, dated November 24, 2000; William O'Keefe, *et al*, members of the 2000 and 2001 MTS Committees, dated February 7, 2001; Daniel F. O'Neill and Peter J. Gancer, Managing Members, Midway Securities, LLC, dated February 9, 2001; Marc Brown, Brown Trading Group, dated February 8, 2001; Lee E. Tenzer, Chairman, Lee E. Tenzer Trading Company, dated February 9, 2001; Daniel Koutris, *et al,* Managing Members, KFT DPM, LLC, dated February 9, 2001; John Henkel, Managing Member, Midwest Partners, LLC, dated February 8, 2001; Michael G. Vitek, President, Botta Capital Management, LLC, dated February 12, 2001; Mark Wolicki, *et al,* RTB Derivatives, LLC, dated February 5, 2001; Bradley Griffith, Managing Member, Specialists DPM, LLC, dated February 8, 2001; Boris Furman, Managing Member, Furman Trading, LLC, dated February 9, 2001; David Barclay, General Counsel, LaRocque Trading Group, LLC, dated February 9, 2001; Ethan Schwartz, Managing Member, Schwartz Trading Group LLC, dated February 9, 2001; Keith Hoglund, *et al,* General Partners, Rathunas Trading, L.L.C., dated February 8, 2001; Joseph Feldman, Manager, Bridgeport DPM, LLC, received February 15, 2001; J. Monville Henige, President, O'Connor Specialists, LLC, on behalf of the members of O'Connor Specialists, LLC; Rathunas LLC, StoneHedge, Securities, LLC, TradeNet, LLC, Option Funding Group, LP, Prime Markets, LLC, Callahan DPM, LLC, Hiland Capital, LLC and O'Connor and Company, LLC, dated February 8, 2001. Copies of the comment letters are available in the Commission's Public Reference Room.