

Funds may be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by U.S. Bancorp Affiliates of more than 5% of the outstanding voting securities of certain of the Acquired Funds and certain of the Operating Acquiring Funds, each Acquiring Fund may be deemed an affiliated person of an affiliated person of the corresponding Acquired Fund, and vice versa, for reasons not based solely on their common adviser, common trustees and/or common officers. In addition, where the U.S. Bancorp Affiliates' ownership, with power to vote, exceeds 25%, the Acquired Funds and the Operating Acquiring Funds may be presumed to be under common control and, therefore, affiliated persons under section 2(a)(3)(C) of the Act. Accordingly, the Reorganization may not meet the "solely by reason of" requirement of rule 17a-8 under the Act.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganization. Applicants submit that the Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that the Firststar Board and the First American Boards, including the disinterested, have determined that participation in the Reorganizations is in the best interest of the shareholders of the Acquiring Funds and the Acquired Funds, and that the interests of the existing shareholders will not be diluted as a result of the Reorganizations. Applicants also note that the exchange of the Acquired Funds' assets for shares of the Acquiring Funds will be based on the Funds' relative net asset values.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-19524 Filed 8-3-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA-1958/803-162]

### Kamilche Company; Notice of Application

July 31, 2001.

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

**ACTION:** Notice of application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

*Applicant:* Kamilche Company  
*Relevant Advisers Act Sections:* Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

**SUMMARY OF APPLICATION:** Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11), which defines the term "investment adviser."

*Filing Dates:* The application was filed on June 1, 2001 and amended on July 10, 2001 and July 24, 2001.

*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 August 25, 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 this issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549-0609. Applicant, Kamilche Company, Suite 2800, 1301 Fifth Avenue, Seattle, Washington 98101-2613.

**FOR FURTHER INFORMATION CONTACT:** Marticha L. Cary, Attorney, or Jennifer L. Sawin, Assistant Director, at (202) 942-0719 (Division of Investment Management, Office of Investment Adviser 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.

### Applicant's Representations

1. Applicant was organized as a Washington corporation in 1974 to be a holding company of an operating company owned by the lineal

descendants of Mark E. Reed and Irene S. Reed and the spouses of those descendants (the "Kamilche Family"). Applicant more recently began investing in partnership interests and other investments. Applicant also performs "family office" functions for the Kamilche Company and trusts, foundations, partnerships, limited liability companies, and other entities created by and for the sole benefit of the Kamilche Family (collectively, the "Clients").

2. Applicant represents that the "family office" services it provides to Clients include: facilitation of estate planning; facilitation of property, casualty, and liability insurance reviews; record keeping; implementation of tax and investment decisions made by Clients; partnership administration; and coordination of professional relationships with accountants, attorneys, custodians, and others as needed. Applicant represents that it also provides the following investment-related "family-office" services to Clients: Estate planning assistance, preparation and analysis of financial statements and financial planning packages, trust administration, and coordination of professional relationships with investment advisers.

3. Applicant represents that the investment advisory services that it provides—in the context of the services described above—make up only a small portion of this overall activities, more specifically, less than 25% of one employee's monthly responsibilities. Applicant further represents that it does not exercise investment discretion over any of Clients' investments and that all Clients make their own investment decisions based only in part on services provided by Applicant.

4. Applicant represents that the payments it receives for its services are, in large part, retainers or compensation for administrative, accounting, support, and oversight services that it provides. Applicant represents that only a small portion of the payments that it receives can be characterized as investment advisory in nature.

5. Applicant represents that it does not hold itself out to the public as an investment adviser. Applicant represents that it does not engage in any advertising, attend any investment-related conferences as a vendor, or conduct any marketing activities whatsoever; nor is Applicant listed in any phone book as an investment adviser.

6. Applicant represents that it has no plans, now or in the future, to solicit or accept clients from the retail or institutional public. Applicant further

represents that its exclusive mission is to be a holding company for the Kamilche Family's operating company and more recently other investments with a portion of this time spent on "family office" services.

#### Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities \* \* \*." Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of "investment adviser" persons that are not within the intent of section 202(a)(11).

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement. Applicant asserts that it does not qualify for any of the exemptions provided by section 203(b). Applicant also asserts that it would not be prohibited from registering with the Commission under section 203A(a) because it has assets under management of not less than \$25,000,000.

3. Applicant requests that the SEC declare it to be a person not within the intent of section 202(a)(11). Applicant states that there is no public interest in requiring that it be registered under the Advisers Act because it offers its services only to members of the Kamilche Family and related entities, its investment activities make up only a small portion of the overall services that it provides, most of the compensation that it receives is for services other than the rendering of investment advice, and it does not and will not hold itself out to the public as an investment adviser.

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

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the

Securities and Exchange Commission will hold the following meeting during the week of August 6, 2001: a closed meeting will be held on Thursday, August 9, 2001, at 11 a.m.

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

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions sets forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), 9(B), and (10) and 17 CFR 200.402(a)(5), (7), (9)(i), 9(ii) and (10), permit consideration of the schedule matters at the closed meeting.

The subject matter of the closed meeting scheduled for Thursday, August 9, 2001, will be:

Institution and settlement of injunctive actions; and

Institutions and settlement of administrative proceedings of an enforcement nature.

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

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

Dated: August 2, 2001.

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44621; File No. SR-Amex-200-23]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC Relating to the Listing and Trading of Index-Linked Exchangeable Notes

July 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 13, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission

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

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

("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on June 15, 2001.<sup>3</sup> Amendment No. 2 was filed on July 30, 2001.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons and to grant accelerated approval to the proposed rule change and Amendment Nos. 1 and 2.

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

The Exchange proposes to approve for listing and trading index-linked exchangeable notes pursuant to Section 107A of the Annex *Company Guide*. The text of the proposed rule change, as amended, follows. Additions are in *italics*.

\* \* \* \* \*

### Section 107 Other Securities

The Exchange will consider listing any security not otherwise covered by the criteria of Sections 101 through 106, provided the issue is otherwise suited for auction market trading.

Such issues will be evaluated for listing against the following criteria:

#### A. General Criteria

(a) through (c) No change.

#### B. Equity Linked Term Notes

(a) through (h) No change.

#### C. Index-Linked Exchangeable Notes

*Index-linked exchangeable notes which are exchangeable debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances*

<sup>3</sup> See letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 13, 2001 ("Amendment No. 1"). In Amendment No. 1, Amex clarified the following: broker-dealers cannot be reasonable for calculating the Index; index-linked exchangeable notes will be treated as equity instruments; the notes are subject to call by the issuer; and the circumstances that would result in the suspension of trading in or the removal from listing of a series of index-linked exchangeable notes.

<sup>4</sup> See letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated July 27, 2001 ("Amendment No. 2"). In Amendment No. 2, Amex made a correction to the proposed rule text to indicate that it is the Exchange rather than the issuer who receives approval from the Commission for indices; clarified that if a broker-dealer is responsible for maintaining an index, that the index cannot be calculated by any broker-dealer; and indicated that it will highlight the "exchangeability" feature of index-linked exchangeable notes in its circular to members.