or otherwise, (iii) guarantees by Xcel of indebtedness issued by e prime or any existing or new subsidiary of e prime, or (iv) guarantees by Xcel of securities issued by any special purpose financing subsidiary of Xcel organized specifically for the purpose of financing any such acquisition. The maturity dates, interest rates, and other provisions of any securities issued and sold as well as any associated commitment, placement, underwriting or selling agent fees, commissions and discounts will be established by negotiation or competitive bidding and will be reflected in the applicable documentation setting forth the terms. Xcel, however, will not issue and sell any securities at interest rates in excess of those generally obtainable at the time of pricing or repricing for securities having the same or reasonably similar maturities; having reasonably similar terms, conditions and features; and being issued by utility companies or utility holding companies of the same or reasonably comparable credit quality as determined by the competitive capital markets.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9148 Filed 4–15–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25517; 812–12414]

AssetMark Funds and AssetMark Investment Services, Inc.; Notice of Application

April 9, 2002.

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

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF THE APPLICATION: AssetMark Funds (the ''Trust'') and AssetMark Investment Services, Inc. (the ''Advisor'') (together, ''Applicants'') request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and grant relief from certain disclosure requirements.

FILING DATES: The application was filed on January 16, 2001, and amended on April 9, 2002.

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 Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 3, 2002, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, 2300 Contra Costa Blvd., Suite 425, Pleasant Hill, CA 94523–3967.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (telephone (202 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust currently is comprised of eight series (each a ''Fund,'' collectively, the ''Funds''), each with its own investment objectives and policies.[1]

2. The Advisor, registered under the Investment Advisers Act of 1940 (the ''Advisers Act''), serves as the investment adviser to the Funds pursuant to an investment advisory agreement with the Trust (''Advisory Agreement'') that was approved by the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and by each Fund's initial shareholder. Under the terms of the Advisory Agreement, the Advisor provides investment advisory services for each Fund and may hire one or more subadvisers (''Managers'') to exercise day-to-day investment discretion over the assets of the Fund pursuant to separate investment advisory agreements (''Management Agreements''). All current and future Managers will be registered under the Advisers Act or exempt from registration. Managers are recommended to the Board by the Advisor and selected and approved by the Board, including a majority of the Independent Trustees. The Advisor compensates each Manager out of the fees paid to the Advisor by the applicable Fund.

3. Subject to Board review, the Advisor selects Managers for the Funds, monitors and evaluates Manager performance, and oversees Manager compliance with the Funds' investment objectives, policies, and restrictions. The Advisor recommends Managers based upon research, the recommendations of consultants, and a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives. The Advisor also recommends to the Board whether a Manager's Management Agreement should be renewed, modified or terminated.

4. Applicants request relief to permit the Advisor, subject to Board approval, to enter into and materially amend Management Agreements without shareholder approval. The requested relief will not extend to a Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Advisor, other than by reason of serving as a Manager to one or more of the Funds (an ''Affiliated Manager'').

5. Applicants also request an exemption from the various disclosure provisions described below that may require the Funds to disclose the fees paid by the Advisor to the Managers. An exemption is requested to permit the Trust to disclose for each Fund (as both a dollar amount and as a percentage of a Fund's net assets): (a) aggregate fees paid to the Advisor and Affiliated Managers; and (b) aggregate fees paid to Managers other than Affiliated Managers (''Aggregate Fee Disclosure''). For any Fund that employs an Affiliated

[1] Applicants also request relief with respect to future series of the Trust and any other registered open-end management investment companies and their series that in the future (a) are advised by the Advisor or any entity controlling, controlled by, or under common control with the Advisor; (b) use the Advisor/Manager structure described in the application; and (c) comply with the terms and conditions in the application (''Future Funds,'' included in the term ''Funds''). The Trust is the only existing registered open-end management investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Manager (as defined below), it will be preceded by the name of the Advisor.

Manager, the Fund will provide separate disclosure of any fees paid to the Affiliated Manager.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the ''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of ''the terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Managers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if 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. Applicants believe that the requested relief meets this standard for the reasons discussed below.

7. Applicants assert that investors choose the Funds because of the Advisor's expertise in evaluating, selecting and supervising Managers. Applicants contend that permitting the Advisor to perform those duties for which the shareholders are paying the Advisor, namely the selection, supervision and evaluation of Managers, will allow each Fund to operate more efficiently. Applicants contend that requiring shareholder approval of the Management Agreements would impose unnecessary costs and delays on the Funds, and may preclude the Advisor from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that many Managers set their fees for advisory services according to a ''posted'' rate schedule. Applicants state that while Managers are willing to negotiate fees lower than those posted in the rate schedule, particularly with large institutional clients, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Managers to negotiate lower advisory fees with the Advisor, the benefits of which may be passed on to Fund shareholders.

Applicants' Conditions

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

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund, as defined in the Act, or in the case of a Fund whose shareholders purchase shares in a public offering on the basis of a prospectus containing the disclosure contemplated by condition 3 below, by the initial shareholder(s) before the shares of the Fund are offered to the public.

2. Within 90 days of the hiring of any new Manager, the Advisor will furnish the shareholders of the applicable Fund all the information about a new Manager that would have been included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. Such information will include Aggregate Fee Disclosure and any changes in such disclosure caused by the addition of a new Manager. To meet this obligation, the Advisor will provide the shareholders of the applicable Fund, within 90 days of the hiring of a Manager, with an Information Statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

3. The Trust's prospectus will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, the Funds will hold themselves out to the public as employing the Advisor/Manager approach described in the application. The Trust's prospectus will prominently disclose that the Advisor has ultimate responsibility (subject to oversight by the Board) to oversee the Managers and recommend their hiring, termination and replacement.

4. The Advisor will provide general management services to the Trust and its Funds, including overall supervisory responsibility for the general management and investment of each Fund's securities portfolio, and, subject to review and approval by the Board will: (i) Set the Fund's overall investment strategies; (ii) evaluate, select, and recommend Managers to manage all or part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among Managers; (iv) monitor and evaluate the performance of Managers, including their compliance with the investment objectives, policies, and restrictions of the Funds; and (v) implement procedures to ensure that the Managers comply with the Fund's investment objectives, policies, and restrictions.

5. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

6. The Advisor will not enter into a Management Agreement with any Affiliated Manager, without such Management Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

7. No trustee or officer of the Trust or director or officer of the Advisor will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director or officer) any interest in a Manager except for: (i) ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the

Advisor, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Manager or an entity that controls, is controlled by or is under common control with a Manager.

8. When a change in Manager is proposed for a Fund with an Affiliated Manager, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Fund's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Manager derives an inappropriate advantage.

9. Each Fund will include in its registration statement the Aggregate Fee Disclosure.

10. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

11. The Advisor will provide the Board, no less frequently than quarterly, with information about the Advisor's profitability on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Manager during the applicable quarter.

12. Whenever a Manager is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the Advisor's profitability.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9147 Filed 4–15–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45719; File No. SR–Amex–2002–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Implementation of a Start-Up Fee for Specialist Participants in the Exchange's Program To Trade Nasdaq Securities on an Unlisted Basis

April 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to charge a one-time start-up fee to specialist participants in the Exchange's program to trade Nasdaq securities on an unlisted basis. The text of the proposed rule change is available at the Amex and at the Commission.

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

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

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

1. Purpose

The Exchange is implementing a program to trade Nasdaq securities on an unlisted basis, which, according to the Exchange, involves significant technology enhancements, Trading Floor renovations, marketing expenses and other start-up costs. To defray the Exchange's costs of establishing the Nasdaq Unlisted Trading Privileges (''UTP'') program, the Exchange proposes to assess a start-up fee on the specialist firms participating in the program.

The Exchange plans to list approximately 100 Nasdaq securities, and it anticipates that these securities will be equally allocated among five participating specialist firms so that each firm has a critical mass of securities (approximately 20 apiece) to dedicate sufficient resources to the program to make it a success. The Exchange, consequently, would divide the approximately $5 million cost of the program equally among the participating specialists.

In the event that there are fewer than five specialist firms in the UTP program, the Exchange still would admit approximately 100 securities to dealings and would allocate more than 20 stocks to one or more specialists. The Exchange, in this circumstance, would raise the $5 million needed to fund the program by dividing the cost of the program among the participating specialist firms in proportion to the number of securities that they are allocated, provided, however, that the start-up fee would be at least $1 million per specialist firm.

In the event that there are six qualified specialists that participate in the program or if the Exchange so decides, the Exchange would admit approximately 120 Nasdaq securities to dealings. The cost of the program would increase to approximately $6 million as a result of this expansion to include more securities. If the Exchange expands the program to approximately 120 securities, the Exchange anticipates that these securities would be allocated so that each specialist firm has at least the critical mass of securities to dedicate sufficient resources to make the program a success (approximately 20 securities apiece). In addition, it is possible that one or more firms might be allocated more than 20 securities if the Exchange determines to admit approximately 120 securities to dealings. The Exchange would divide the $6 million cost of the expanded program among the participating specialists in proportion to the number of securities that they are allocated, provided, however, that the start-up fee would be at least $1 million per specialist firm.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[3] in general, and furthers the objectives of section 6(b)(4)[4] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).