

compliance for each individual transfer agent depends on the number of lost accounts at each transfer agent. Based on information received from transfer agents, we estimate that the annual cost industry wide is \$3.3 million.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: May 10, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-12567 Filed 5-17-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25574; 812-12578]

### J.P. Morgan Fleming Asset Management (USA), Inc., et al.; Notice of Application

May 15, 2002.

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

**ACTION:** Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a).

**APPLICANTS:** J.P. Morgan Fleming Asset Management (USA), Inc. ("JPMFAM"), J.P. Morgan Fleming Asset Management (London), Ltd. ("JPMFAML"), any other existing or future registered investment adviser which acts as investment adviser or subadviser to a Portfolio (defined below) and which controls, is controlled by, or is under common control (as defined in section 2(a)(9) of the Act) with J.P. Morgan Chase & Co.

("JPM") ("Future Advisers"),<sup>1</sup> J.P. Morgan Securities, Inc. ("JPMSI"), Mutual Fund Group ("MFG"), Mutual Fund Trust ("MFT"), Mutual Fund Select Group ("MFSG"), Mutual Fund Select Trust ("MFST"), Mutual Fund Variable Annuity Trust ("MFVAT"), Mutual Fund Investment Trust ("MFIT"), Growth and Income Portfolio ("GIP" together with MFG, MFT, MFSG, MFVAT, and MFIT, the "Trusts"), all existing and future series of the Trusts, and any existing or future registered investment companies and their series, that are advised or subadvised by the Advisers.<sup>2</sup>

**SUMMARY OF APPLICATION:** Applicants request an order to permit the Portfolio to engage in certain principal transactions with JPMSI.

**FILING DATES:** The application was filed on July 13, 2001, and amended on April 22, 2002. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

**HEARING ON NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 10, 2002, 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 Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants: c/o Philip von Türk, Esq., JP Morgan Chase Bank, Legal Department, 345 Park Avenue, 5th Floor, New York, NY 10154-1002; and Robert B. Adams, Esq. and Merrill B.

<sup>1</sup> JPMFAM, JPMFAML and the Future Advisers are referred to collectively in this notice as the Advisers. Any Adviser that currently intends to rely on the requested order is named as an applicant in this application. Any other Adviser that relies on the order in the future will comply with the terms and conditions of this application.

<sup>2</sup> The Trusts, all existing or future series of the Trusts, and any existing or future registered investment companies and their series that are advised or subadvised by the Advisers are referred to collectively in this notice as the "Portfolios". Any Portfolio that currently intends to rely on the requested order is named as an applicant in this application. Any other Portfolio that relies on the order in the future will comply with the terms and conditions of this application.

Stone, Esq., Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Grossnickle, Branch Chief, or Nadya B. Roytblat, Assistant Director, (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC. 20549-0102 (tel. 202-942-8090).

### Applicants' Representations

1. Each Trust is an open end management investment company registered under the Act, MFG, MFT, MFSG, MFST, MFVAT, MFIT and MFMIT are organized as business trusts under the laws of the Commonwealth of Massachusetts. GIP is organized as a trust under the laws of the State of New York. Each Trust, consistent with its stated investment objectives and policies, may invest in high quality short-term taxable money market instruments and repurchase agreements.

2. JPMFAM, a Delaware corporation, is a wholly-owned subsidiary of JP Morgan Chase Bank ("Chase"), a New York banking corporation and wholly-owned subsidiary of JPM, a Delaware corporation. JPMFAML is a United Kingdom corporation and a wholly owned subsidiary of Chase. JPMFAM and JPMFAML are each registered as investment advisers under the Investment Advisers Act of 1940 (the "Advisers Act"). Currently, each Portfolio has an investment advisory agreement with JPMFAM under which JPMFAM provides investment advisory and management services. JPMFAM, in turn, has entered into subadvisory agreements with JPMFAML for certain of the Portfolios.

3. JPMSI is a wholly owned subsidiary of JPM and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act"). JPMSI, a primary dealer in U.S. Government securities, is one of the largest dealers in commercial paper, repurchase agreements and other money market instruments in the United States.

4. Applicants state that the Advisers and JPMSI are functionally independent of each other. JPMSI and the Advisers operate as completely separate entities under the umbrella of JPM, the parent holding company. While JPMSI and the Advisers are under common control, each entity has its own separate directors, officers and employees, is separately capitalized, maintains its

own separate books and records and operates on different sides of walls of separate with respect to the Portfolios and *Eligible Securities*.<sup>3</sup> The Advisers maintain offices physically separate from JPMSI.

5. Investment decisions for the Portfolios are determined solely by the Advisers. The portfolio managers and other employees that are responsible for the investment of the Portfolios are employed solely by one of the Advisers (and not JPMSI), and have lines of reporting responsibility solely within the Advisers. The compensation of personnel assigned to an Adviser will not depend on the volume or nature of trades with JPMSI, except to the extent that such trades may affect the profits and losses of JPM and its subsidiaries as a whole.

6. The portfolio securities in which the Portfolios invest that are the subject of this application include taxable money market instruments and repurchase agreements. Practically all trading in money market instruments takes place in over-the-counter markets consisting of groups of dealers who are primarily major securities firms or large commercial banks. Money market securities generally are traded in lots of \$1,000,000 or more on a net basis and normally do not involve payment of either brokerage commissions or transfer taxes. The cost of portfolio transactions to the Portfolios consistent primarily of dealer or underwriter spreads. Spreads vary somewhat among money market instruments, but generally spread level for short-term investment grade products are in the range of 5 to 10 basis points (.05% to .10%). In the Portfolios' experience, there is not a great deal of variation in the spreads on money market instruments quoted by the various dealers, except perhaps during turbulent market conditions.

7. The money market consists of an elaborate telephonic and electronic communications network among dealer firms, principal issuers of money market instruments and principal institutional buyers of such instruments. Because the money market is a dealer market, there is not a single obtainable price for a given instrument that generally prevails at any given time. A dealer acts either as "agent" on behalf of issuer clients or as "principal" for its own account. In either capacity, a dealer posts rates throughout its internal, private distribution network that are intended to reflect "market clearing price levels," as determined by the dealer. Only

customers of the dealer seeking to purchase money market instruments have access to these postings.

8. Because of the variety of types of money market instruments and other factors, the money markets tends to be somewhat segmented. The markets for various types of instruments will vary in terms of price, volatility, liquidity and availability. Although the rates for the different types of instruments tend to fluctuate closely together, there may be significant differences in yield among the various types of instruments, and even within a particular instrument category, depending upon the maturity of the instrument and the credit quality of the issuer. Moreover, from time to time, segmenting exists within money market securities with the same maturity date and rating. The segmenting is based on such factors as whether the issuer is an industrial or financial company, whether the issuer is domestic or foreign and whether the securities are asset-backed or unsecured. Because dealers tend to specialize in certain types of money market instruments, the particular needs of a potential buyer or seller with respect to certain type of security, maturity or credit quality may limit the number of dealers who can provide optimum pricing and execution. Hence, with respect to any given type of instrument, there may be only a few dealers who can be expected to have the instrument available and be in a position to quote an acceptable price.

9. JPMSI is among the largest major dealers in the taxable money market instruments and repurchase agreements, ranking among the top firms in each of the major markets and product areas.<sup>4</sup> As of April 2001; JPMSI had become the third largest dealer in terms of number of U.S. commercial paper programs. When it conducted an informal survey in September 1999, CSI was recognized as the most active secondary trading firm in the bankers acceptance market. JPMSI also is one of the leading participants in the medium-term note

("MTNs") market. MTNs are offered continuously in public or private offerings, with maturities beginning at nine months. Because commercial paper is not issued for a maturity longer than nine months and bankers acceptances are not issued for a maturity of longer than six months, there are fewer longer term investment alternatives than shorter term investment alternatives for the Portfolios. Thus, MTNs represent a significant portion of the longer-term money market investment alternatives. In 2000, JPMSI ranked as the third largest manager or co-manager of MTN programs in the United States in terms of proceeds (\$37.9 billion) and market share (15.1%). Applicants further believe that JPMSI plays a relatively significant role in the repurchase agreement market with average outstandings from \$35 billion to \$45 billion in 2001. Applicant believes that it is one of the top ten leading dealers in repurchase agreements and estimates that the ten leading dealers control approximately 80% of the market for repurchase agreements.

10. Applicants state that because of substantial consolidation in the money market industry, there are fewer major dealers who are active in the market than was the case only a few years ago. In light of this consolidation, applicants believe that it has become very important for investors to have access to as many dealers who are actively engaged in the money market as possible. Applicants state that there are far fewer sources of information available to investors. Applicants also contend that the decline in the number of active money market dealers has affected the competition in the pricing of investment opportunities.

11. Subject to the general supervision of the trustees of each of the Trusts (collectively, the "Trustees"), the Advisers are responsible for making investment decisions and for the placement of portfolio transactions. The Portfolios have no obligation to deal with any dealer or group of dealers in the execution of their portfolio transactions. When placing orders, an Adviser must attempt to obtain the best net price and the most favorable execution of its orders. In doing so, it takes into account such factors as price, the size, type and difficulty of the transaction involved in the dealer's general execution and operational facilities.

#### Applicants' Legal Analysis

1. Applicants request an order pursuant to sections 6(c) and 17(b) of the Act exempting certain transactions from the provisions of section 17(a) of

<sup>3</sup> Italicized terms are defined as set forth in paragraph (a) of rule 2a-7, unless otherwise indicated.

<sup>4</sup> Applicants state that JPM was formed by the merger of The Chase Manhattan Corporation ("CMC") and J.P. Morgan & Co. Inc. ("JPM&CO.") on December 2000. At the time of the merger, J.P. Morgan Securities Inc. ("Old JPMSI") was a broker-dealer subsidiary of JPM&Co. and Chase Securities Inc. ("CSI") was a broker-dealer subsidiary of CMC. The money market operations of Old JPMSI and CSI were combined in January 2001 ("Combination") and Old JPMSI merged into CSI (which became the current JPMSI) in May 2001. The rankings and market share figures discussed in this notice generally reflect the current money market operations of JPMSI, the combined money market operations of Old JPMSI and CSI beginning in January 2001, and, prior to the Combination, the combined operations of Old JPMSI and CSI on a pro forma basis.

the Act to permit JPMSI, acting as principal, to sell to or purchase from the Portfolios certain money market instruments and to enter into repurchase agreements, subject to the conditions set forth below.

2. Section 17(a) of the Act generally prohibits an affiliated person or principal underwriter of a registered investment company, or any affiliated person of that person, acting as principal, from selling to or purchasing from the registered company, or any company controlled by the registered company, any security or other property. Because an Adviser is an affiliated person of the Portfolios it advises and JPMSI and the Advisers are under common control, the Portfolios are currently prohibited from conducting portfolio transactions with JPMSI in transactions in which JPMSI acts as principal.

3. Section 17(b) of the Act provides that the Commission, upon application, may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transactions, 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 the registered investment company concerned and with the general purposes of the Act. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants contend that the rationale for the proposed order is based upon the decreased liquidity in the money market, the major and growing role played in the money market by JPMSI and the special requirements of the Portfolios with respect to their portfolio transactions. In particular applicants note the following.

(a) With over 53 billion invested in short term money market instruments and repurchase agreements as of January 31, 2002, the Portfolios are major buyers and sellers in the money market with a strong need for a constant flow of large quantities of high quality money market instruments and repurchase agreements. The applicants believe that access to such a significant dealer as JPMSI in

these markets increases the Portfolios' abilities to manage their portfolios effectively.

(b) The fact that the Portfolios regularly invest in securities with short maturities and repurchase agreements, combined with the active portfolio management techniques employed by the Advisers, often results in high portfolio activity and the need to make numerous purchases and sales of securities and instruments. Such high portfolio activity makes the need to obtain suitable portfolio securities and best price and execution especially compelling.

(c) JPMSI is such a significant factor in the money market, including the market for repurchase agreements, that being unable to deal directly with JPMSI may, upon occasion, deprive the Portfolios of obtaining best price and execution.

(d) The money market, including the market for repurchase agreements, is highly competitive, and removing a competitive factor as important as JPMSI from the dealers with which the Portfolios may conduct principal transactions may indirectly deprive the Portfolios of obtaining best price and execution even when the Portfolios trade with other dealers.

5. Applicants believe that the requested order will provide the Portfolios with broader and more complete access to the money market, which is necessary to carry out the policies and objectives of each of the Portfolios in obtaining the best price, execution and quality in all portfolio transactions, and will provide the Portfolios with important new information sources in the money market, to the direct benefit of investors in the Portfolios. Applicants submit that these reasons apply equally to Portfolios that are not money market funds even though they invest in money market instruments to a lesser extent. Applicants believe that the transactions contemplated by the application are identical to those in which they currently are engaged except for the proposed participation of JPMSI, and that such transactions are consistent with the policies of the Portfolios as recited in their registration statements and reports filed under the Act.

6. Applicants believe that the procedures set forth with respect to transactions with JPMSI are structured in such a way as to insure that the transactions will be, in all instances, reasonable and fair, and will not involve overreaching on the part of any person concerned, and that the requested exemption is appropriate in the public interest and consistent with the

protection of investors and the purpose fairly intended by the policy and provisions of the Act.

### Applicants' Conditions

1. Transactions Subject to the Exemption—The exemption shall be applicable to principal transactions in the secondary market and primary or secondary fixed price dealer offerings not made pursuant to underwriting syndicates. The principal transactions which may be conducted pursuant to the exemption will be limited to transactions in *Eligible Securities*. To the extent a Portfolio is subject to rule 2a-7, such *Eligible Securities* must meet the portfolio maturity and quality requirements of paragraphs (c)(2) and (c)(3) of rule 2a-7. To the extent a Portfolio is not subject to rule 2a-7, such *Eligible Securities* must meet the requirements of clauses (i), (iii) and (iv) of paragraph (c)(3) of Rule 2a-7. Additionally:

(a) No Portfolio shall make portfolio purchases pursuant to the exemption that would result directly or indirectly in a Portfolio investing pursuant to the exemption more than 2% of its *Total Assets* (or, in the case of a Portfolio that is not subject to Rule 2a-7, more than 2% of the total of its cash, cash items and *Eligible Securities*) in securities which, when acquired by the Portfolio (either initially or upon any subsequent roll over) were *Second Tier Securities*; provided that any Portfolio may make portfolio sales of *Second Tier Securities* pursuant to the exemption without regard to this limitation.

(b) The exemption shall not apply to an *Unrated Security* other than a *Government Security*.

(c) The exemption shall not apply to any security, other than a repurchase agreement, issued by JPM or any affiliated person thereof, or to any security subject to a *Demand Feature* or *Guarantee* issued by JPM or any affiliated person thereof.

2. Repurchase Agreement Requirements—The Portfolios may engage in repurchase agreements with JPMSI only if JPMSI has: (a) net capital, as defined in rule 15c3-1 under the 1934 Act, of at least \$100 million and (b) a record (including the record of predecessors) of at least five years continuous operations as a dealer during which time it engaged in repurchase agreements relating to the kind of security subject to the repurchase agreement. JPMSI will furnish the Advisers with financial statements for its most recent fiscal year and the most recent semi-annual financial statements made available to customers. The Advisers shall

determine that JPMSI complies with the above requirements and with other repurchase agreement guidelines adopted by the Trustees. Each repurchase agreement will be *Collateralized Fully*.

3. Volume Limitations on Transactions—Transactions other than repurchase agreements conducted pursuant to the exemption shall be limited to no more than 25% of (a) the direct or indirect purchases or sales, as the case may be, by each Portfolio of *Eligible Securities* other than repurchase agreements; and (b) the purchases or sales, as the case may be, by JPMSI of *Eligible Securities* other than repurchase agreements. Transactions comprising repurchase agreements conducted pursuant to the exemption shall be limited to no more than 10% of (a) the repurchase agreements directly or indirectly entered into by the relevant Portfolio and (b) the repurchase agreements transacted by JPMSI. These calculations shall be measured on an annual basis (the fiscal year of each Portfolio and of JPMSI) and shall be computed with respect to the dollar volume thereof.

4. Information Required to Document Compliance with Price Tests—Before any transaction may be conducted pursuant to the exemption, the relevant Portfolio or the Advisers must obtain such information as they deem necessary to determine that the price test (as defined in condition (5) below) applicable to such transaction has been satisfied. In the case of purchase or sale transactions, the Portfolios or the Advisers must make and document a good faith determination with respect to compliance with the price test based upon current price information obtained through the contemporaneous solicitation of bona fide offers in connection with the type of security involved (the same instrument type, credit rating, maturity and segment, if any, but not necessarily the identical security or issuer). With respect to prospective purchases of securities, these dealers must be those who have in their inventories or otherwise have access to money market securities of the categories and the types desired and who, in the experience of the Portfolios and the Advisers, are in a position to quote favorable prices with respect thereto. With respect to the prospective disposition of securities, these dealers must be those who, in the experience of the Portfolios and the Advisers, are in a position to quote favorable prices. Before any repurchase agreements are entered into pursuant to the exemption, the Portfolios or the Advisers must obtain and document competitive

quotations from at least two other dealers with respect to repurchase agreements comparable to the type of repurchase agreement involved, except that if quotations are unavailable from two such dealers only one other competitive quotation is required.

5. Price Tests—In the case of purchase and sale transactions, a determination will be required in each instance, based upon the information available to the Portfolios and the Advisers, that the price available from JPMSI is at least as favorable as that available from other sources. In the case of “swaps” involving trades of one security for another, the price test will be based upon the transaction viewed as a whole, and not upon the two components thereof individually. With respect to transactions involving repurchase agreements, a determination will be required in each instance, based on the information available to the Portfolios and the Advisers, that the income to be earned from the repurchase agreement is at least equal to that available from other sources.

6. Permissible Spread—JPMSI’s spreads in regard to any transaction with the Portfolios will be no greater than its customary dealer spreads which in turn will be consistent with the average or standard spread charged by dealers in money market securities for the type of security and the size of transaction involved.

7. Parties Must Be Factually Independent—The Advisers, on the one hand, and JPMSI, on the other, will operate on different sides of appropriate walls of separation with respect to the Portfolios and *Eligible Securities*. The walls of separation will include all of the following characteristics, and such others as may from time to time be considered reasonable by JPMSI and the Advisers to facilitate the factual independence of the Advisers from JPMSI.

(a) Each of the Advisers will maintain offices physically separate from those of JPMSI.

(b) The compensation of persons assigned to any of the Advisers (i.e., executive, administrative or investment personnel) will not depend on the volume or nature of trades effected by the advisers for the Portfolios with JPMSI under this exemption, except to the extent that such trades may affect the profits and losses of JPM and its subsidiaries as a whole.

(c) JPMSI will not share any of its respective profits or losses on such transactions with any of the Advisers, except to the extent that such profits and losses affect the general firmwide

compensation of JPM and its subsidiaries as a whole.

(d) Personnel assigned to the Advisers’ investment advisory operations on behalf of the Portfolios will be exclusively devoted to the business and affairs of one or more of the Advisers.

(e) Personnel assigned to JPMSI will not participate in the decision-making process for the Advisers or otherwise seek to influence the Advisers other than in the normal course of sales and dealer activities of the same nature as are simultaneously being carried out with respect to nonaffiliated institutional clients. Each Adviser, on the one hand, and JPMSI, on the other, may nonetheless maintain affiliations other than with respect to the Portfolios, and in addition with respect to the Portfolios as follows:

(i) Adviser personnel may rely on research, including credit analysis and reports prepared internally by various subsidiaries and divisions of JPMSI.

(ii) Certain senior executives of JPM with responsibility for overseeing operations of various divisions, subsidiaries and affiliates of JPM are not precluded from exercising those functions over the Advisers because they oversee JPMSI as well, provided that such persons shall not have any involvement with respect to proposed transactions pursuant to the exemption and will not in any way attempt to influence or control the placing by the Portfolios or the Advisers of Orders in respect of *Eligible Securities* with JPMSI.

8. Record-Keeping Requirements—The Portfolios and the Advisers will maintain such records with respect to those transactions conducted pursuant to the exemption as may be necessary to confirm compliance with the conditions to the requested relief. In this regard:

(a) Each Portfolio shall maintain an itemized daily record of all purchases and sales of securities pursuant to the exemption showing for each transaction: the name and quantity of securities; the unit purchase or sale price; the time and date of the transaction; and whether the security was a *First Tier Security* or a *Second Tier Security*. The records also shall, for each transaction, document two quotations received from other dealers for comparable securities, including: The names of the dealers; the names of the securities; the prices quoted; the times and dates the quotations were received; and whether such securities were *First Tier Securities* or *Second Tier Securities*.

(b) Each Portfolio shall maintain a ledger or other record showing, on a daily basis, the percentage of the

Portfolio's *Total Assets* (or, in the case of a Portfolio that is not subject to rule 2a-7, the percentage of the total of its cash, cash items and *Eligible Securities*) represented by *Second Tier Securities* acquired from JPMSI.

(c) Each Portfolio will maintain records sufficient to verify compliance with the volume limitations contained in condition (3), above. JPMSI will provide the Portfolios with all records and information necessary to implement this requirement.

(d) Each Portfolio will maintain records sufficient to verify compliance with the repurchase agreement requirements contained in condition (2), above.

The records required by this condition (8) will be maintained and preserved in the same manner as records required under rule 31a-1(b)(1).

9. Guidelines—Each of the compliance departments of the Advisers and of JPMSI (the "Compliance Departments") will prepare and, as necessary update guidelines for personnel of the Advisers or JPMSI, as the case may be, to make certain that transactions conducted pursuant to the exemption comply with the conditions of the exemption, and that the parties generally maintain arm's length relationships. In training personnel of JPMSI, particular emphasis will be given to the fact that the Portfolios are to receive rates as favorable as other institutional purchasers buying the same quantities. The Compliance Departments will periodically monitor the activities of JPMSI and the Advisers to make certain that the conditions set forth in the exemption are adhered to.

10. Audit Committee Review—The Audit Committees, consisting of Trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees"), will prepare, periodically review and update the guidelines for the Advisers and JPMSI to ensure that transactions conducted pursuant to the exemption comply with the conditions set forth therein and that the above procedures are followed in all respects. The respective Audit Committees will periodically monitor the activities of the Portfolios, the Advisers and JPMSI in this regard to ensure that these matters are being accomplished.

11. Scope of Exemption—Applicants expressly acknowledge that any order issued on the application would grant relief from section 17(a) of the Act only, and would not grant relief from any other section of, or rule under, the Act including, without limitation, rule 2a-7.

12. Board Review—The Trustees, including a majority of the Independent

Trustees, have approved the Portfolio's participation in transactions conducted pursuant to the exemption and have determined that such participation by the Portfolios is in the best interests of the Portfolios and their investors. The minutes of the meetings of the Trustees at which this approval was given reflect in detail the reasons for the Trustees' determinations. The Trustees will review no less frequently than annually the Portfolios' participation in transactions conducted pursuant to the exemption during the prior year and determine whether the Portfolios' participation in such transactions continues to be in the best interests of the Portfolios and their investors. Such review will include (but not be limited to) (a) a comparison of the volume of transactions in each type of security conducted pursuant to the exemption to the market presence of JPMSI in the market for that type of security, and (b) a determination that the Portfolios are maintaining appropriate trading relationships with other sources for each type of security to ensure that there are appropriate sources for the quotations required by condition (4) above. The minutes of the meetings of the Trustees at which such determinations are made will reflect in detail the reasons for the Trustees' determinations.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-12641 Filed 5-17-02; 8:45 am]

**BILLING CODE 8010-01-M**

## 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 held the following additional meeting during the week of May 13, 2002:

An additional closed meeting was held on Tuesday, May 14, 2002, at 11 a.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meeting. Certain staff members who had an interest in the matter were also present.

The General Counsel of the Commission, or his designee, certified

that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the closed meeting.

The subject matter of the closed meeting held on Tuesday, May 14, 2002, was:

Institution and settlement of an administrative proceeding 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: May 15, 2002.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-12638 Filed 5-15-02; 4:15 pm]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45921; File No. SR-CHX-2002-12]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated to Amend the Rules Relating to the Composition of the CHX's Minor Rule Violation Panel

May 14, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 26, 2002, the Chicago Stock Exchange, Incorporated ("CHX" 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 CHX proposes to amend the rules relating to the composition of the CHX's Minor Rule Violation Panel ("Panel"). The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

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

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