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A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 28th day of October 2002.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02-28013 Filed 11-1-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Citizens, Inc., Class A Common Stock, no par value) File No. 1-16509

October 30, 2002.

Citizens, Inc., a Colorado corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its Class A Common Stock, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Colorado, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on June 4, 2002, to withdraw the Issuer's Security from listing on the Amex. The Issuer states that the Security has traded on the New York Stock Exchange, Inc. ("NYSE") since August 2002. The Issuer stated that the

Board took such action in order to avoid the direct and indirect costs and the diversion of the market resulting from dual listing on the Amex and NYSE.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and shall not affect its listing on the NYSE or its obligation to be registered under section 12(b) of the Act.<sup>3</sup>

Any interested person may, on or before November 19, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02-27999 Filed 11-1-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### [Investment Company Act Release No. 25789; 812-12224]

#### Credit Suisse Asset Management, LLC, et al.; Notice of Application

October 29, 2002.

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

**ACTION:** Notice of application under section 12(d)(1)(j) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, under section 6(c) of the Act for an exemption from section 17(e) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

**SUMMARY OF APPLICATION:** Applicants request an order to permit (a) Certain investment companies and other institutional investors to use cash collateral from securities lending transactions ("Cash Collateral") and

uninvested cash ("Uninvested Cash," and together with the Cash Collateral, the "Cash Balances") to purchase shares of certain registered open-end management investment companies ("Registered Investment Funds") and unregistered investment companies ("Unregistered Investment Funds," and together with the Registered Investment Funds, the "Investment Funds"); (b) Credit Suisse First Boston (New York Branch) ("CSFB") to accept fees from certain registered investment companies for acting as securities lending agent; (c) CSFB, Credit Suisse First Boston Corporation ("CSFB Corp."), Credit Suisse Asset Management Securities, Inc. ("CSAMSI") and any broker-dealer that may be controlling, controlled by or under common control with CSFB, CSFB Corp. or CSAMSI (each, an "Affiliated Broker-Dealer") to borrow portfolio securities from certain registered investment companies and to receive brokerage commissions from, and to engage in principal securities transactions with, registered investment companies that are affiliated persons solely because they hold 5% or more of the outstanding voting securities of an Investment Fund; and (d) certain investment companies, other institutional investors and the Investment Funds to engage in certain purchase and sale transactions with each other.

**APPLICANTS:** Credit Suisse European Equity Fund, Inc., Credit Suisse Select Equity Fund, Inc., Credit Suisse Global Technology Fund, Inc., Credit Suisse Municipal Bond Fund, Inc., Credit Suisse Institutional U.S. Core Equity Fund, Inc., Credit Suisse Institutional Fixed Income Fund, Inc., Credit Suisse Institutional High Yield Fund, Inc., Credit Suisse Capital Appreciation Fund, Credit Suisse Capital Funds, Credit Suisse Emerging Growth Fund, Inc., Credit Suisse Emerging Markets Fund, Inc., Credit Suisse Fixed Income Fund, Credit Suisse Global Fixed Income Fund, Inc., Credit Suisse Global Health Sciences Fund, Inc., Credit Suisse Global Post-Venture Capital Fund, Inc., Credit Suisse Global Financial Services Fund, Inc., Credit Suisse Institutional Grade Bond Fund, Inc., Credit Suisse Institutional International Fund, Inc., Credit Suisse Japan Growth Fund, Inc., Credit Suisse International Focus Fund, Inc., Credit Suisse New York Municipal Fund, Credit Suisse Opportunity Funds, Credit Suisse Short Duration Bond Fund, Credit Suisse Small Cap Growth Fund, Inc., Credit Suisse Strategic Small Cap Fund, Inc., Credit Suisse Strategic Value

<sup>1</sup> 15 U.S.C. 781(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 781(b).

<sup>4</sup> 17 CFR 200.30-3(a)(1).

Fund, Inc., Credit Suisse Cash Reserve Fund, Inc., Credit Suisse Institutional Money Market Fund, Inc., Credit Suisse New York Tax Exempt Fund, Inc., Credit Suisse Trust and Credit Suisse Global New Technologies Fund, Inc. (each, a "Registered Affiliated Fund"), Credit Suisse Asset Management, LLC ("CSAM"), CSFB, CSFB Corp. and CSAMSI ("Applicants").

**FILING DATES:** The application was filed on August 16, 2000 and amended on January 7, 2002, May 22, 2002 and August 21, 2002. Applicants have 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 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 November 21, 2002, and should be accompanied by proof or 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 Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Credit Suisse Asset Management, LLC, 466 Lexington Avenue, New York, New York, 10017, Attn: Hal Liebes.

**FOR FURTHER INFORMATION CONTACT:** John L. Sullivan, Senior Counsel, at (202) 942-0681, or Nadya B. Roytblat, Assistant Director, at (202) 942-0578 (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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

### Applicants' Representations

1. Each of the Registered Affiliated Funds is either an open-end or closed-end management investment company registered under the Act and advised or subadvised by CSAM or an entity controlling, controlled by or under common control with CSAM (each, including CSAM, a "CS Entity"). Each such CS Entity is or will be registered as an investment adviser under the

Investment Advisers Act of 1940 or exempt from such registration. Applicants requests that the order also apply to any other existing or subsequently created registered open-end and closed-end management investment companies (and each series thereof) that are advised or subadvised by a CS Entity (included in the term "Registered Affiliated Funds").<sup>1</sup>

2. CSFB is a Zurich-based bank. CSFB's New York branch will serve as the lending agent in a securities lending program ("Program") for the Registered Affiliated Funds and certain other registered management investment companies (and series thereof) of which CSFB is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person ("Second-Tier Affiliate") (each, an "Other Fund," and together with the Registered Affiliated Funds, the "Funds"). Other participants in the Program include certain investment companies exempt from registration under sections 3(c)(1) and 3(c)(7) of the Act ("Unregistered Funds"), including those advised by a CS Entity ("Unregistered Affiliated Funds"); certain managed accounts advised or sub-advised by a CS Entity ("Managed Accounts"); and certain corporations, partnerships or other entities (i) in which a Registered Affiliated Fund or an Unregistered Affiliated Fund directly or indirectly owns, controls or holds with power to vote 5% or more of the outstanding voting securities or (ii) which may be deemed to be controlled by or under common control with a Registered Affiliated Fund or Unregistered Affiliated Fund ("Portfolio Companies," and together with the Managed Accounts, the "Other Institutional Investors," and together with the Funds and Unregistered Funds, the "Participants").<sup>2</sup> The Other Institutional Investors also include other corporations, partnerships and other entities that are not owned or controlled by a CS Entity. The Managed Accounts are not pooled investment vehicles, and the Other Institutional Investors are not investment companies as defined in the Act.

3. Each of the Investment Funds is or will be advised by a CS Entity. The Registered Investment Funds are or will

<sup>1</sup> All existing Registered Affiliated Funds that currently intend to rely on the relief requested in the application have been named as Applicants. Any existing and future entity may rely on the requested order only in accordance with the terms and conditions in the application.

<sup>2</sup> If a Portfolio Company is relying on section 3(c)(1) or 3(c)(7) of the Act, it will be treated as an Unregistered Fund for purposes of the requested relief.

be open-end management investment companies registered under the Act. Certain of the Registered Investment Funds are or will be taxable or tax-exempt money market funds operating pursuant to rule 2a-7 under the Act or short-term bond funds that seek current income consistent with the preservation of capital by investing in fixed-income securities and maintaining a dollar-weighted average maturity of three years or less. The Registered Investment Funds are, or will be, designed specifically for use in connection with the investment of Cash Balances. The Unregistered Funds will be investment companies exempt from registration under sections 3(c)(1) or 3(c)(7) of the Act. Each Unregistered Investment Fund will comply with rule 2a-7 under the Act.

4. CSFB Corp. and CSAMSI are broker-dealers registered under the Securities Exchange Act of 1934 and are (together with CSAM) indirect wholly owned subsidiaries of the Credit Suisse Group, an international financial services firm.

5. Under the Program, CSFB and each Fund will enter into a securities lending agreement ("Securities Lending Agreement") that authorizes CSFB to enter into a borrowing agreement ("Borrow Agreement") with certain entities ("Borrowers") approved by a Fund from a list of Borrowers maintained by CSFB. The Securities Lending Agreement authorizes CSFB to lend portfolio securities of the Fund to Borrowers in exchange for Cash Collateral or other types of collateral, as indicated in the Securities Lending Agreement and Borrowing Agreement. CSFB invests any Cash Collateral on behalf of the Fund in accordance with specific guidelines provided by the Fund. These guidelines identify the particular Investment Funds and other investments, if any, in which Cash Collateral may be invested, as well as the amounts that may be invested.

6. When a securities loan is collateralized with Cash Collateral, CSFB will receive a portion of the return earned on the investment of the Cash Collateral. Depending on the arrangement negotiated with the Borrower by CSFB, the Fund may pay the Borrower a rate of interest for use of the Cash Collateral. When the collateral is not Cash Collateral, CSFB will negotiate a lending fee to be paid by the Borrower to the Fund. For its services to the Funds, if the requested order is granted, CSFB will receive fees based on a share of the revenue generated from the securities lending transactions.

7. The personnel who will provide day-to-day lending agency services to

the Funds do not provide investment advisory services to the Funds or participate in any way in the selection of portfolio securities or other aspects of the management of the Funds.

8. The Registered Affiliated Funds and the Unregistered Affiliated Funds may have Uninvested Cash that comes from a variety of sources, including dividend or interest payments, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of portfolio securities to meet anticipated redemption and dividend payments, as well as monies received from investors. Other Institutional Investors, including the Managed Accounts and the Portfolio Companies, also may have Uninvested Cash.

9. Applicants request an order to permit (a) the Participants to use Cash Balances to purchase shares of the Investment Funds; (b) CSFB to accept fees from the Funds for acting as securities lending agent; (c) the Affiliated Broker-Dealers to borrow portfolio securities from the Registered Affiliated Funds and to receive brokerage commissions from, and to engage in principal securities transactions with, the Other Funds that are affiliated persons solely because they hold 5% or more of the outstanding voting securities of an Investment Fund; and (d) the Participants and the Investment Funds to engage in certain purchase and sale transactions with each other.<sup>3</sup>

### Applicants' Legal Analysis

#### *A. Investment of Cash Balances by the Participants in the Investment Funds*

1. Section 12(d)(1)(A) of the Act prohibits an investment company or any company controlled by the investment company from acquiring shares of a registered investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if

the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(J) 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 section 12(d)(1) if such exemption is consistent with the public interest and the protection of investors.

2. Applicants seek an order under section 12(d)(1)(J) of the Act exempting them from the provisions of section 12(d)(1) of the Act to permit the Funds, Unregistered Funds and Portfolio Companies to purchase, and the Registered Investment Funds to sell, securities in excess of the limits of sections 12(d)(1)(A) and 12(d)(1)(B) in connection with the investment of Cash Balances in a Registered Investment Funds.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B). Applicants note that shares of the Investment Funds will be sold without a sales load, redemption fee, asset-based distribution fee or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.). In addition, before approving any advisory contract, the board of directors ("Board") of a Registered Affiliated Fund; including a majority of the directors/trustees who are not interested persons within the meaning of section 2(a)(19) of the Act ("Independent Directors/Trustees"), will consider the extent to which the advisory fees charged to a Registered Affiliated Fund by a CS Entity should be reduced to account for reduced services provided to the Registered Affiliated Fund by such CS Entity as a result of Uninvested Cash being invested in the Investment Funds. Applicants also note that an Investment Fund will not acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any Second-tier Affiliate, acting as principal, to sell any security to, or purchase any security from, the registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, among others, any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of such other person; Any person 5% or more of whose outstanding voting securities are directly or indirectly

owned, controlled, or held with power to vote by the other person; Any person directly or indirectly controlling, controlled by, or under common control with, the other person; and, in the case of an investment company, its investment adviser.

5. As investment adviser to each of the Registered Affiliated Funds and the Investment Funds, CSAM could be deemed to control both the Registered Affiliated Funds and the Investment Funds. Accordingly, the Registered Affiliated Funds and the Investment Funds could be deemed to be under common control and affiliated persons of each other. In addition, if an Other Fund acquires 5% or more of the outstanding voting securities of an Investment Fund, the Investment Fund could be deemed an affiliated person of the Other Fund. As a result, section 17(a) would prohibit an Investment Fund from selling its shares to, and redeeming its shares from, certain Funds.

6. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and if the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act if the 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.

7. Applicants request an order under sections 6(c) and 17(B) of the Act to permit the funds to purchase shares of the Investment Funds and the Investment Funds to redeem their shares from the Funds. Applicants submit that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and consistent with the general purposes of the Act, as well as with the policies of the respective Funds. Applicants state that the Funds will be treated like any other shareholders in an Investment Fund, and the Funds will purchase and redeem shares of an Investment Fund on the same terms and basis as such shares are purchased and redeemed by all other shareholders of an Investment Fund. Applicants state that a Fund will only be permitted to invest Cash Balances in an Investment Fund if that

<sup>3</sup>No relief is requested from the provisions of section 12(d)(1)(A) and (B) with respect to any investment of Uninvested Cash in a Registered Investment Fund by any Unregistered Fund that is not an Unregistered Affiliated Fund or by any Other Fund.

Investment Fund has been approved for investment by the Fund and if the Investment Fund invests in instruments that the Fund has previously determined are an acceptable medium for the investment of Cash Balances. A Fund that complies with rule 2a-7 under the Act will not invest its Cash Balances in an Investment Fund that does not comply with rule 2a-7. For these reasons, Applicants believe that their requested relief meets the standards of sections 6(c) and 17(b) of the Act.

8. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person of a registered investment company or any Second-tier Affiliate, acting as principal, from effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless an application regarding the joint arrangement has been filed with the Commission and granted by order. Under rule 17d-1, in passing on applications for orders under section 17(d), the Commission considers whether the participation of the registered investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

9. Applicants state that the Participants (by purchasing and redeeming shares of an Investment Fund), the Investment Funds (by selling shares of an Investment Fund to and redeeming them for the Participants), a CS Entity (by managing the portfolio securities of the Registered Affiliated Funds, the Unregistered Affiliated Funds, the Managed Accounts and the Investment Funds at the same time that the Registered Affiliated Funds, Unregistered Affiliated Funds and Managed Accounts' Cash Balances are invested in shares of an Investment Fund) and CSFB (by acting as lending agent, investing Cash Collateral in shares of an Investment Fund and receiving a portion of the revenue generated by securities lending transactions) could be considered participants in a joint enterprise or arrangement. Applicants request an order in accordance with section 17(d) and rule 17d-1 to permit certain transactions incident to investment of Cash Balances in the Investment Funds.

10. Applicants state that the Registered Affiliated Funds and the other Participants will invest in the Investment Funds on the same basis as any other shareholder in the Investment Funds. Accordingly, Applicants believe

that the proposed investment in Investment Funds meets the standards of section 17(d) and rule 17d-1.

#### *B. Interfund Transactions*

1. Applicants state that certain Participants and certain Investment Funds currently rely on rule 17a-7 to engage in purchase and sale transactions in securities ("Interfund Transactions"). Rule 17a-7 excepts from the prohibitions of section 17(a) the purchase or sale of certain securities between registered investment companies that are affiliated persons or Second-tier Affiliates of each other or between a registered investment company and a person that is an affiliated person or Second-tier Affiliate of such company solely by reason of having a common investment adviser or affiliated investment advisers, common officers, and/or common directors. If at any time a Participant were to own 5% or more of the voting securities of an Investment Fund, then such Participant would be an affiliated person of such Investment Fund, and such Investment Fund would be an affiliated person of such Participant, by reason of such ownership of voting securities, and not solely by reason of such Participant and such Investment Fund having a common investment adviser, common officers and/or common directors.

2. Applicants request an order under sections 6(c) and 17(b) to permit the Interfund Transactions. Applicants state that the Participants and the Investment Funds will comply with rule 17a-7 under the Act, other than the requirement that the participants be affiliated solely by reason of having a common investment adviser or affiliated investment advisers, common officers, and/or common directors. Applicants state that the affiliation created by the proposed transaction does not affect the other protections provided by rule 17a-7 or the policies underlying the rule.

#### *C. Payment of Fees by the Funds to CSFB*

1. Applicants state that the lending agent arrangement between each Fund and CSFB, under which CSFB is to receive compensation based on a share of the revenue generated from the securities lending transactions, may be deemed a joint enterprise or other joint arrangement requiring an order under section 17(d) of the Act and rule 17d-1 under the Act. Consequently, Applicants request an order in accordance with section 17(d) and rule 17d-1 to the extent necessary to permit each Fund to pay, and CSFB to accept, fees in connection with CSFB's acting as lending agent in the manner and subject

to the conditions and procedures described in the application.

2. Applicants submit that to safeguard each Registered Affiliated Fund's shareholders, Applicants will adopt the following procedures to ensure that the proposed fee arrangement and other terms governing the relationship with CSFB, as lending agent, will meet the standards of rule 17d-1:

(a) In connection with the approval of CSFB as lending agent for a Registered Affiliated Fund and implementation of the proposed fee arrangement, a majority of the Board (including a majority of the Independent Directors/Trustees) will determine that (i) the contract with CSFB is in the best interests of the Registered Affiliated Fund and its shareholders, (ii) the services to be performed by CSFB are appropriate for the Registered Affiliated Fund, (iii) the nature and quality of the services provided by CSFB are at least equal to those offered and provided by others, and (iv) the fees for CSFB's services are fair and reasonable in light of the usual and customary charges imposed by other lending agents for services of the same nature and quality.

(b) Each Registered Affiliated Fund's contract with CSFB for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of the Independent Directors/Trustees) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of an arrangement whereby CSFB will be compensated as lending agent based on a percentage of the revenue generated by a Registered Affiliated Fund's participation in the Program, the Board shall obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board of the Registered Affiliated Fund, including a majority of the Independent Directors/Trustees, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were conducted in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Registered Affiliated Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application and (ii) maintain and preserve for a

period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

3. With respect to the Other Funds, Applicants state that the nature of the affiliation between the Other Funds and CSFB is only technical. Applicants state that CSFB would not have any influence over the decisions made by any Other Fund and that any fee arrangements between the Other Funds and CSFB will be the product of arms-length bargaining.

#### *D. Loans by Registered Affiliated Funds to Affiliated Broker-Dealers*

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of a registered investment company, or any Second-tier Affiliate, acting as principal, to borrow money or other property from a registered investment company. Under section 2(a)(3)(E) of the Act, CSFB Corp. is an affiliated person of those Registered Affiliated Funds for which it acts as investment adviser and, under section 2(a)(3)(C), a Second-tier Affiliate of those Registered Affiliated Funds for which CSAM acts as an investment adviser, since CSFB Corp. and CSAM may be deemed to be under common control. Further, the other Affiliated Broker-Dealers may be deemed to be under common control with CSAM and Second-tier Affiliates of the Registered Affiliated Funds. Accordingly, under section 17(a)(3) of the Act, CSFB Corp. and the other Affiliated Broker-Dealers would be prohibited from borrowing securities from the Registered Affiliated Funds.

2. The Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from Section 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit the Registered Affiliated Funds to lend portfolio securities to the Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Registered Affiliated Fund will be made with a spread that is no lower than that applied to comparable loans to

unaffiliated Borrowers.<sup>4</sup> In this regard, Applicants state that at least 50% of the loans made by the Registered Affiliated Funds, on an aggregate basis, will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads ("Schedule of Spreads") established by the Board of each Registered Affiliated Fund, including a majority of the Independent Directors/Trustees.

#### *E. Transactions by the Other Funds With the Affiliated Broker-Dealers*

1. As noted above, sections 17(a)(1), (2) and (3) of the Act prohibit certain principal transactions between a registered investment company and its affiliates. The Affiliated Broker-Dealers and the Investment Funds could be deemed to be under common control and thus affiliated persons of one another. Therefore, an Affiliated Broker-Dealer could be deemed a Second-tier Affiliate of an Other Fund that purchases 5% or more of the outstanding voting securities of an Investment Fund. Applicants request relief under sections 6(c) and 17(b) from section 17(a) to permit principal transactions between the Other Funds and the Affiliated Broker-Dealer where the affiliation between the parties arises solely as a result of an investment by an Other Fund of Cash Balances in an Investment Fund.

2. Applicants state that there will be no element of self-dealing because the Affiliated Broker-Dealers have no influence over the decisions made by any Other Fund. Applicants state that each transaction between an Affiliated Broker-Dealer and an Other Fund would be the product of arms-length bargaining.

3. Section 17(e)(2) of the Act makes it unlawful for any affiliated person of a registered investment company, or any Second-tier Affiliate, acting as broker in connection with the sale of securities to or by that registered investment company, to receive from any source a commission for effecting the transaction that exceeds (a) the usual and customary broker's commission if the sale is effect on a securities exchange, (b) 2 percent of the sales price if the sale is effected in connection with a secondary distribution of the securities, or (c) 1

<sup>4</sup> A "spread" is the compensation earned by a Registered Affiliated Fund, as lender, from a securities loan, which compensation is in the form either of a lending fee payable by the Borrower to the Registered Affiliated Fund (where non-Cash Collateral is posted) or of the excess, retained by the Registered Affiliated Fund, over a rebate rate payable by the Registered Affiliated Fund to the Borrower (where Cash Collateral is posted and then invested by the Registered Affiliated Fund).

percent of the purchase or sale price of such securities if the sale is otherwise effected.

4. Applicants request relief under section 6(c) from section 17(e)(2) as it may apply to transactions by Other Funds that are brokered by an Affiliated Broker-Dealer. Applicants believe that each transaction between an Other Fund and an Affiliated Broker-Dealer would be the product of arms-length bargaining.

#### **Applicant's Conditions**

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

##### *A. General*

1. The Securities Lending Program of each Fund will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

2. The approval of the Registered Affiliated Fund's Board, including a majority of the Independent Directors/Trustees, shall be required for the initial and subsequent approvals of CSFB's service as lending agent for the Registered Affiliated Fund pursuant to the Securities Lending Program, for the institution of all procedures relating to the Securities Lending Program as it relates to the Registered Affiliated Fund, and for any periodic review of loan transactions for which CSFB acted as lending agent pursuant to the Securities Lending Program.

3. No Fund will purchase shares of any Investment Fund unless participation in the Securities Lending Program has been approved by a majority of the Independent Directors/Trustees of the Fund. The Independent Directors/Trustees also will evaluate the Securities Lending Program no less frequently than annually and determine that investing Cash Collateral in the Investment Funds is in the best interests of the shareholders of the Fund. Further, the Independent Directors/Trustees of the Registered Affiliated Funds will initially and at least annually thereafter determine that investing Uninvested Cash in the Investment Funds is in the best interests of the shareholders of the Registered Affiliated Funds.

4. Each of the Registered Affiliated Funds will invest Uninvested Cash in, and hold shares of, the Investment Funds only to the extent that the Registered Affiliated Fund's aggregate investment of Uninvested Cash in the Investment Funds does not exceed 25% of the Registered Affiliated Fund's total assets. For purposes of this limitation, each Registered Affiliated Fund or series

thereof will be treated as a separate investment company.

5. The Registered Affiliated Funds, Unregistered Affiliated Funds, and any Investment Fund will be advised by a CS Entity or will have a CS Entity as its general partner or managing member. A Registered Affiliated Fund that is subadvised, but not advised, by a CS Entity may rely on the order provided that the CS Entity manages the Cash Balances and that any relief granted from the provision of section 12(d)(1)(A) and (B) of the Act shall be available only if the Registered Affiliated Fund is in the same group of investment companies (as defined in Section 12(d)(1)(G) of the Act) as the Registered Investment Fund in which the Registered Affiliated Fund invests Cash Balances.

#### *B. Loans to Affiliated Broker-Dealers*

1. The Registered Affiliated Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

2. The total value of securities loaned to any one broker-dealer on the approved list will be in accordance with a schedule by the Registered Affiliated Fund's Board, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Registered Affiliated Fund, computed at market.

3. A Registered Affiliated Fund will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction cost incurred in making such loan.

4. (a) All loans will be made with spreads no lower than those set forth in a Schedule of Spreads which will be established and may be modified from time to time by each Registered Affiliated Fund's Board and by a majority of the Independent Directors/Trustees.

(b) The Schedule of Spreads will set forth rates of compensation to each Registered Affiliated Fund that are reasonable and fair and that are determined in light of those considerations set forth in the application.

(c) The Schedule of Spreads will be uniformly applied to all Borrowers of the Registered Affiliated Funds' portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

(d) If a security is loaned to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will

be made at no less than the higher spread.

(e) The Registered Affiliated Funds' portfolio securities lending program will be monitored on a daily basis by an officer of each Registered Affiliated Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to each Registered Affiliated Fund's Board, including a majority of the Interested Directors/Trustees.

5. Each Registered Affiliated Fund's Board, including a majority of the Independent Directors/Trustees: (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of this order if granted and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. Each Registered Affiliated Fund's Board, including a majority of the Independent Directors/Trustees: (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of this order if granted and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

#### *C. Investment of Cash Balances in an Investment Fund*

1. Investment in shares of an Investment Fund by a particular Fund will be in accordance with the guidelines regarding the investment of securities lending Cash Collateral specified by the Fund in the Securities Lending Agreement. A Fund's Cash Balances will be invested in a particular Investment Fund only if that Investment Fund has been approved for investment by the Fund and if that Investment Fund invests solely in the types of instruments that the Fund has authorized for the investment of its Cash Balances.

2. An Investment Fund will not acquire securities of any investment

company in excess of the limits contained section 12(d)(1)(A) of the Act.

3. Each Fund will purchase and redeem shares of any Unregistered Investment Fund on the same basis as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders investing in the same series of the Unregistered Investment Fund. A separate account will be established in the shareholder records of the Unregistered Investment Fund for the account of each Fund for the account of each Fund that invests in such Unregistered Investment Fund.

4. Each Unregistered Investment Fund will comply with rule 2a-7 under the Act. A CS Entity as the investment adviser to such Unregistered Investment Fund will adopt and monitor the procedures described in rule 2a-7(c)(7) under the Act and will take such other actions as are required to be taken pursuant to such procedures. A Fund may only purchase shares of such Unregistered Investment Fund if the relevant CS Entity determines on an ongoing basis that the Unregistered Investment Fund is in compliance with rule 2a-7. Such CS Entity will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which such determination was made. The record will be subject to examination by the Commission and the staff.

5. Each Unregistered Investment Fund will comply with the requirements of sections 17(a), (d) and (e) and 18 of the Act as if it were a registered open-end investment company. With respect to all redemption requests made by a Fund, each Unregistered Investment Fund will comply with section 22(e) of the Act. Any CS Entity that serves as investment adviser to an Unregistered Investment Fund will adopt procedures designed to ensure that the Unregistered Investment Fund complies with section 17(a), (d) and (e), 18 and 22(e) of the Act. Any such CS Entity will also periodically review and update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31(a)-1(b)(1), 31a-1(b)(2)(ii) and 31a-1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to

examination by the Commission and the staff.

6. The net asset value per share with respect to shares of an Unregistered Investment Fund will be determined separately for each Unregistered Investment Fund by dividing the value of the assets belonging to that Unregistered Investment Fund, less the liabilities of that Unregistered Investment Fund, by the number of shares outstanding with respect to that Unregistered Investment Fund.

7. If a CS Entity collects a fee from an Investment Fund for acting as its investment adviser with respect to Uninvested Cash invested by a Registered Affiliated Fund, before the next meeting of the Board of a Registered Affiliated Fund that invests in the Investment Funds is held for the purpose of voting on an advisory contract pursuant to section 15 of the Act, that CS Entity will provide the Board with specific information regarding the approximate cost to the CS Entity for, or portion of the advisory fee under the existing advisory fee attributable to, managing the Uninvested Cash of the Registered Affiliated Fund that can be expected to be invested in the Investment Funds. Before approving any advisory contract pursuant to Section 15 of the Act, the Board of the Registered Affiliated Fund, including a majority of the Independent Directors/Trustees, shall consider to what extent, if any, the advisory fees charged to the Registered Affiliated Fund by a CS Entity should be reduced to account for the reduced services provided to the Registered Affiliated Fund by such CS Entity as a result of Uninvested Cash being invested in the Investment Funds. The minute books of the Registered Affiliated Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

8. Investment in shares of an Investment Fund by a particular Fund will be consistent with such Fund's investment objectives and policies. A Fund that complies with rule 2a-7 under the Act will not invest its Cash Balances in an Investment Fund that does not comply with rule 2a-7.

9. The shares of an Investment Fund will not be subject to a sales load, redemption fee, any asset-based distribution fee or service fee (as defined in rule 2830(b)(9) of the Conduct rules of the NASD).

#### D. Interfund Transactions

1. To engage in Interfund Transactions, the Participants and the Investment Funds will comply with rule

17a-7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or Second-tier Affiliates) of each other solely by reason of having a common investment adviser or investments advisers which are affiliated persons of each other, common officers, and/or common directors, solely because a Participant and an Investment Fund might become affiliated persons within the meaning of Section 2(a)(3)(A) and (B) of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46731; File No. SR-Amex-2002-78]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Temporary Waiver of Associate Member Fees for Persons Trading Nasdaq Securities Admitted to Unlisted Trading Privileges Through the Exchange's Electronic Order Routing Systems

October 28, 2002.

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 September 26, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 waive through December 31, 2002: (1) the membership dues, initiation fee, application processing fee, initial registration fee and the electronic access fee for new Associate Members that trade only Nasdaq stocks through the Exchange's electronic order routing

systems during the period of the waiver, and (2) the electronic access fee for existing Associate Members that currently do not have electronic access privileges and that trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the waiver.

The proposed fee schedule 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 aspects 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 proposing to temporarily waive Associate Member and electronic access fees for broker/dealer firms that currently do not have electronic access to the Amex Order File ("AOF"). The waiver would last through December 31, 2002, and would apply to firms that trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the waiver. Broker-dealers that become Associate Members during the waiver period would not have to pay: (1) 2002 dues applicable to Associate Members, (2) Associate Member initiation fee, (3) application processing fee, (4) initial registration fee, and (5) the electronic access fee. Existing Associate Members that currently do not have electronic access to the AOF also could upgrade to electronic access privileges without paying the customary electronic access fee provided they trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the fee waiver.

At the end of the waiver period, firms that became Associate Members during the waiver and traded only Nasdaq stocks through the AOF would have to: (1) Acquire a regular membership and pay the fees and dues associated with becoming a regular member, or (2) pay the 2003 dues, the Associate Member

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

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