for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

This collection of information is found at 17 CFR 275.206(3)–2 and is necessary in order for the investment adviser to obtain the benefits of rule 206(3)–2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The collection of information requirements under the rule is mandatory. Information subject to the disclosure requirements of rule 206(3)–2 does not require submission to the Commission; and, accordingly, the disclosure pursuant to the rule is not kept confidential.

Commission-registered investment advisers are required to maintain and preserve certain information required under rule 206(3)–2 for five (5) years. The long-term retention of these records is necessary for the Commission's inspection program to ascertain compliance with the Advisers Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (2) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within thirty (30) days of this notice.

Dated: February 13, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3773 Filed 2–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26353; 812–13018]

Hennion & Walsh, Inc., et al.; Notice of Application

February 17, 2004.

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

ACTION: Notice of an application under: (i) Section 6(c) of the Investment Company Act of 1940 (''Act'') for exemptions from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d), and 26(a)(2)(C) of the Act and from rules 19b–1 and 22c–1 under the Act; (ii) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges and conversion offers; and (iii) sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain unit investment trusts (''UITs'') to: (i) Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (ii) offer unitholders certain exchange and rollover privileges and conversion offers; (iii) publicly offer units without requiring the sponsor to take for its own account or place with others $100,000 worth of units; (iv) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt; and (v) sell portfolio securities of a terminating series of a UIT to a new series of that UIT.

APPLICANTS: Hennion & Walsh, Inc. (''Sponsor'' or ''Hennion & Walsh''), Smart Trust, EST Symphony Trust, The Pinnacle Family of Trusts, Equity Securities Trust, Schwab Trusts, any future registered UIT sponsored or co-sponsored by Hennion & Walsh or an entity controlled by or under common control with Hennion & Walsh (the future UITs, together with the above-specified UITs are ''Trusts'') and any presently outstanding or subsequently issued series of each Trust (each, a ''Series'').

FILING DATES: The application was filed on September 12, 2003 and amended on February 9, 2004.

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 March 12, 2004 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609; Applicants: Peter J. DeMarco, c/o Hennion & Walsh, Inc., 2001 Route 46, Waterview Plaza, Parsippany, New Jersey 07054.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714 or Nadya B. Roytblat, Assistant Director, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Hennion & Walsh, a broker-dealer registered under the Securities Exchange Act of 1934, is the sponsor of the Trusts. Each Trust is or will be a UIT registered under the Act.[1] Each Series is or will be created by a trust indenture among the Sponsor, a banking institution or trust company as trustee (''Trustee''), and, for those Series that the Trustee does not also serve as evaluator, the evaluator.

2. The Sponsor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the deposited portfolio (''Units''). The Units are then offered to the public through the Sponsor, underwriters and dealers at a public offering price which, during the initial offering period, is based upon the aggregate market value (the aggregate offering side evaluation for fixed income securities) of the underlying securities plus a front-end sales charge. The sales charge currently ranges from 1.25% to 5.5% of the public offering price, generally depending upon the terms of the underlying securities.

3. The Sponsor maintains a secondary market for Units and continually offers to purchase Units at prices based upon the market value (the bid side evaluation for fixed income securities) of the underlying securities. Investors may purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If the Sponsor discontinues maintaining such a market at any time for any Series,

[1] All presently existing Trusts that currently intend to rely on the requested order have been named as applicants. Any other existing Trust or any Trust organized in the future that relies on the requested order will comply with the terms and conditions of the application.

holders of the Units (''Unitholders'') of that Series may redeem their Units through the Trustee.

A. Deferred Sales Charge and Waiver of Deferred Sales Charge Under Certain Circumstances

1. Applicants request an order to the extent necessary to permit them to impose a sales charge on a deferred basis (''deferred sales charge'' or ''DSC''). For each Series, its prospectus will set a maximum sales charge per Unit as a dollar amount and/or as a percentage of the initial offering price, a portion of which may be collected ''up front'' (*i.e.*, at the time an investor purchases the Units). The DSC would be collected subsequently in installments (''Installment Payments'') from Unitholders'' distributions on the Units.

2. In order to ensure that sufficient cash is available to make Installment Payments, a Series may hold securities, the proceeds from the maturity or sale of which may be used to make payments. Installment Payments will be collected from Unitholders by withholding the payment amount from Unitholders' distributions on Units, from proceeds of Unit redemptions or sales by the Unitholder, or by reducing the number of Units held by the Unitholder. The Installment Payment will be passed by the Trustee to the Sponsor at the time it is collected. The Trustee may advance an Installment Payment if, for example, it is due immediately before a dividend or interest payment is due on portfolio securities. The Trustee will be reimbursed when the Installment Payment is collected from the Unitholder.

3. When a Unitholder redeems or sells Units, the Sponsor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Sponsor will assume that Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Sponsor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d–1 under the Act.

4. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by item 3 of Form N–1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus for that Series also will disclose that portfolio securities may be sold to pay an Installment Payment if distribution income is insufficient, and that securities will be sold pro rata or a specific security will be designated for sale.

B. Exchange Privilege, Rollover Privilege, and Conversion Offer

1. Applicants propose to offer an exchange privilege to Unitholders of the Trusts at a reduced sales charge (''Exchange Privilege''). Unitholders would be able to exchange any or all of their Units in a Series of a Trust for Units in one or more available Series of the Trusts (''Exchange Series''). Applicants also propose a conversion offer (''Conversion Offer'') pursuant to which Unitholders may elect to redeem Units of any Series in which there is no active secondary market (''Redemption Series'') and apply the proceeds to the purchase of available Units of one or more Series of the Trusts (''Conversion Series''). In addition, applicants propose to offer a rollover privilege to Unitholders of the Trusts at a reduced sales charge (''Rollover Privilege''). Unitholders would be able to ''roll over'' their Units in a Series which is terminating (''Terminating Series'') for Units in one or more new Series of the Trusts (''Rollover Series'').

2. To exercise the Exchange Privilege or Rollover Privilege, a Unitholder must notify the Sponsor. In order to exercise the Conversion Offer, a Unitholder must notify his or her retail broker. The Conversion Offer will be handled entirely through the Unitholder's retail broker and the retail broker must tender the Units to the Trustee of the Redemption Series for redemption and then apply the proceeds toward the purchase of Units of a Conversion Series. Exercise of the Exchange Privilege or Rollover Privilege is subject to the following conditions: (i) The Sponsor must be maintaining a secondary market in Units of the available Exchange Series or Rollover Series; (ii) at the time of the Unitholder's election to participate, there must be Units of the Exchange Series or Rollover Series to be acquired available for sale, either under the initial primary distribution or in the Sponsor's secondary market; (iii) exchanges will be in whole Units only; and (iv) for certain Series, Units may be obtained in blocks of certain sizes only.

3. Unitholders who wish to exchange Units under the Exchange Privilege, the Rollover Privilege or the Conversion Offer within the first five months of purchase will not be eligible for the reduced sales charge. Such Unitholders will be charged a sales load equal to the greater of: (i) The reduced sales load, or (ii) an amount which, when added to the sales charge paid by the Unitholder upon his or her original purchase of Units of the applicable Series, would equal the sales charge applicable to the direct purchase of the newly acquired Units, determined as of the date of purchase.

C. Purchase and Sale Transactions Between a Terminating Series and a New Series

1. Certain Terminating Series will have a date (''Rollover Date'') by which Unitholders of that Series may, at their option, redeem their Units and receive in return Units of a subsequent Series of the same type (''New Series''). The New Series will be created on or about the Rollover Date and will have a portfolio that contains securities, many, if not all, of which are actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least U.S. $25,000) on an exchange (a ''Qualified Exchange'') that is either (i) a national securities exchange that meets the qualifications of section 6 of the Securities Exchange Act of 1934, (ii) a foreign securities exchange meeting the qualifications set forth in the proposed amendments to rule 12d3–1(d)(6) under the Act [2] and releasing daily closing prices or (iii) the Nasdaq-National Market System (securities meeting the preceding tests are referred to as ''Qualified Securities'').

2. Applicants anticipate that there will be some overlap in the Qualified Securities selected for the portfolios of a Terminating Series and the related New Series. Absent the requested relief, a Terminating Series would, upon termination, sell its Qualified Securities

[2] Investment Company Act Rel. No. 17096 (Aug. 3, 1989) (proposing amendments to Rule 12d3–1). The proposed amended rule defined a ''Qualified Foreign Exchange'' as a stock exchange in a country other than the United States where: (i) Trading generally occurred at least four days per week, (ii) there were limited restrictions on the ability of acquiring companies to trade their holdings on the exchange, (iii) the exchange had a trading volume in stocks for the previous year of at least U.S. $7.5 billion, and (iv) the exchange had a turnover ratio for the preceding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term ''Qualified Foreign Exchange.''

on the applicable Qualified Exchange. Likewise, a New Series would acquire its Qualified Securities on the applicable Qualified Exchange. This procedure would result in Unitholders of both the Terminating Series and the New Series incurring brokerage commissions on the same Qualified Securities. Applicants accordingly request an order to the extent necessary to permit a Terminating Series to sell its Qualified Securities to a New Series and to permit the New Series to purchases those securities.

Applicants' Legal Analysis

A. DSC and Waiver of DSC Under Certain Circumstances

1. Section 4(2) of the Act defines a ''unit investment trust'' as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a ''redeemable security'' as a security that, upon its presentation to the issuer, enables the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value (''NAV''). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term ''sales load'' as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from sections 2(a)(35) and 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, 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. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (i) riskless trading in investment company securities due to backward pricing, (ii) disruption of orderly distribution by dealers selling shares at a discount, and (iii) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d–1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Sponsor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Sponsor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

B. Exchange Privilege, Conversion Offer and Rollover Privilege

1. Sections 11(a) and (c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Privilege, the Conversion Offer and the Rollover Privilege.

2. Applicants state that the Exchange Privilege and Rollover Privilege provide investors with a convenient means of transferring their interests at a reduced sales charge into Exchange Series and Rollover Series which suit their current investment objectives. Further, applicants state that the Conversion Offer provides Unitholders of a Series in which there is no active secondary market to redeem those Units and invest the proceeds at a reduced sales charge into Units of the Conversion Series in which there is an active secondary market. Applicants state that absent the Exchange Privilege, Rollover Privilege and Conversion Offer, Unitholders would be required to dispose of their Units, either in the secondary market (in the case of the Exchange Privilege and Rollover Privilege) or through redemption, and to reinvest, at the then fully applicable sales charge, into the chosen Series.

3. Applicants represent that Unitholders will not be induced or encouraged to participate in the Exchange Privilege, Rollover Privilege, or Conversion Offer through an active advertising or sale campaign. The Sponsor recognizes its responsibility to its investors against generating excessive commissions through churning and asserts that the sales charge collected will not be a significant economic incentive to salesmen to promote inappropriately the Exchange Privilege, Rollover Privilege or the Conversion Offer. Applicants state that the reduced sales charge will fairly and adequately compensate the Sponsor and the participating underwriters and brokers for their services and expenses in connection with the administration of the programs. Applicants further believe that the Exchange Privilege, Rollover Privilege, and Conversion Offer are 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.

C. Purchase and Sale Transactions Between a Terminating Series and a New Series

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly controlling, controlled by, or under common control with the other person. Hennion & Walsh is or will be the sponsor of each Series. Since the sponsor of a Series may be deemed to control the Series, all of the Series may be deemed to be affiliated persons of each other.

2. Rule 17a–7 under the Act was designed to permit registered investment companies which might be deemed affiliated persons by reason of common investment advisers, directors and/or officers, to purchase securities from or sell securities to one another at an independently determined price, provided that certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors (''Board'') to adopt and monitor procedures to assure compliance with the rule. Paragraph (f) of the rule requires that: (i) Directors who are not interested persons under section 2(a)(19) of the Act constitute a majority of the Board; (ii) such directors

select and nominate any other directors who are not interested persons under the Act; and (iii) any legal counsel for such directors be an ''independent legal counsel,'' as defined in rule 0–1(a)(6) under the Act. Because UITs do not have Boards, the Series would be unable to comply with these requirements. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraphs (e) and (f).

3. Section 17(b) of the Act provides that the Commission will exempt a proposed transaction from section 17(a) if evidence establishes that: (i) The terms of the transaction are reasonable and fair and do not involve overreaching; (ii) the transaction is consistent with the policies of each registered investment company involved; and (iii) the transaction is consistent with the general purposes of the Act. Applicants request relief under sections 6(c) and 17(b) to permit a Terminating Series to sell Qualified Securities to a New Series and permit the New Series to purchase the Qualified Securities.

4. Applicants believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b). Applicants represent that purchases and sales between the Terminating and New Series will be consistent with the policies of each Series. Applicants further state that permitting the proposed transactions would result in savings on brokerage fees for the Terminating and New Series.

5. Applicants state that the condition that the Qualified Securities must be actively traded on a Qualified Exchange protects against overreaching. In addition, applicants state that the Sponsor will certify to the Trustee, within five days of each sale of Qualified Securities from a Terminating Series to a New Series: (i) That the transaction is consistent with the policy of both the Terminating Series and the New Series, as recited in their respective registration statements and reports filed under the Act; (ii) the date of the transaction; and (iii) the closing sales price on the Qualified Exchange for the sale date of the Qualified Securities. The Trustee will then countersign the certificate, unless, in the unlikely event that the Trustee disagrees with the closing sales price listed on the certificate, the Trustee immediately informs the Sponsor orally of such disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transactions, the Sponsor will ensure that the price of the Units of the New Series, and the distributions to Unitholders of the Terminating Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the Trustee's corrected price, the Sponsor and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

C. Net Worth Requirements

1. Section 14(a) of the Act requires that registered investment companies have $100,000 of net worth prior to making a public offering. Applicants believe that each Series will comply with this requirement because the Sponsor will deposit substantially more than $100,000 of debt and/or equity securities, depending on the objective of the particular Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Sponsor's intention to sell all of the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, including that the UIT invest only in ''eligible trust securities,'' as defined in the rule. Applicants submit that they may not rely on rule 14a–3 because certain Series (collectively, ''Equity Series'') may invest in equity securities which do not satisfy the definition of eligible trust securities.

3. Consequently, applicants seek an exemption under section 6(c) of the Act to exempt the Equity Series from the net worth requirement of section 14(a) of the Act. Applicants state that the Series and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

D. Capital Gains Distribution

Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, except a UIT investing in ''eligible trust securities'' (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Equity Series do not limit their investments to ''eligible trust securities,'' the Equity Series do not qualify for the exemption in paragraph (c) of rule 19b–1. Therefore, applicants request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Series' expenses, Installment Payments or by requests to redeem Units, events over which the Sponsor and the Equity Series have no control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

Applicants' Conditions

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

A. DSC and Waiver of DSC Under Certain Circumstances

1. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N–1A relating to deferred sales charges, modified as appropriate to reflect the differences between UITs and open-end investment companies, and a schedule setting forth the number and date of each installment payment.

2. Any DSC imposed on Units issued by a Series will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c–10(a) under the Act.

B. Exchange Privilege, Conversion Offer and Rollover Privilege

1. The prospectus of each Series offering exchanges, rollovers, or conversions and any sales literature or advertising that mentions the existence of the Exchange Privilege, Conversion Offer or Rollover Privilege will disclose that the Exchange Privilege, Conversion Offer or Rollover Privilege is subject to modification, termination or suspension without notice, except in limited cases.

2. Whenever the Exchange Privilege, Conversion Offer or Rollover Privilege is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the

impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to make one or more New Series eligible for the Exchange Privilege, Conversion Offer or Rollover Privilege, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated under that section, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies, and restrictions.

3. An investor who purchases Units under the Exchange Privilege, Conversion Offer or Rollover Privilege will pay a lower sales charge than that which would be paid for the Units by a new investor.

D. Net Worth Requirements

Applicants will comply in all respects with the requirements of rule 14a–3, except that the Series will not restrict their portfolio investments to ''eligible trust securities.''

E. Purchase and Sale Transactions Between a Terminating Series and a New Series

1. Each sale of Qualified Securities by a Terminating Series to a New Series will be effected at the closing price of the securities sold on a Qualified Exchange on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each Terminating Series and New Series.

3. The Trustee of each Terminating Series and New Series will review the procedures discussed in the application relating to the sale of securities from a Terminating Series and the purchase of those securities for deposit in a New Series, and make such changes to the procedures as the Trustee deems necessary to ensure compliance with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to this order will be maintained as provided in rule 17a–7(g).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3830 Filed 2–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49239; File No. SR–Amex–2004–02])

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Select Utility Index

February 12, 2004.

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 January 8, 2004, 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. On February 12, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] 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 list and trade notes, the return on which is based upon a modified market capitalization-weighted portfolio of 20 dividend paying common stocks selected from the Standard & Poor's (''S&P'') Utilities Sector, as reconstituted from time to time in the manner set forth below (the ''Select Utility Index'' or ''Index'').

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 11, 2004 (''Amendment No. 1''). In Amendment No. 1, the Amex clarified its earlier comparison of the Select Utility Index proposed herein with an existing index, the Select Sector Utilities Index. The Amex also included a representation that the Exchange would consult with the Commission in the event that the number of Index components falls to ten (10) or fewer stocks.

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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[4] The Amex proposes to list for trading under Section 107A of the Company Guide notes, the performance of which is linked to the Select Utility Index (the ''Select Utility Index Notes'' or ''Notes''). The Select Utility Index will be calculated and maintained solely by the Amex.[5]

The Notes will initially conform to the listing guidelines under Section 107A[6] and continued listing guidelines

[4] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[5] Subject to the criteria in the prospectus regarding the construction of the Index, the Exchange has sole discretion regarding changes to the Index due to reconstitutions and adjustments to the Index and the multipliers of the individual components. Amex represents that it maintains and enforces appropriate policies and trading restrictions that address the use of non-public information by its employees, such as non-public knowledge derived in the component selection and maintenance of the Select Utilities Index. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on February 10, 2004.

[6] The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess

Continued