

instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received voting instructions.

8. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of a Fund), and in particular the Funds will either provide for annual meetings (except insofar as the Commission may interpret Section 16 not to require such meetings) or, if annual meetings are not held, comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Sections 16(a) and, if and when applicable, 16(b). Further, the Funds will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Trustees or Directors and with whatever rules the Commission may promulgate with respect thereto.

9. The Funds will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its registration statement that: (1) Shares of such Fund are offered to insurance company separate accounts offered by various participating insurance companies which fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) due to the differences of tax treatment or other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund may conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken in response to a conflict.

10. No less than annually, the Participating Parties and/or the Manager shall submit to the Boards such reports, materials, or data as each Board may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the relevant Board. The obligations of the Participating Parties to provide these reports, materials, and data to a Board shall be a contractual obligation of all Participating Parties under the agreements governing their participation in the Funds.

11. All reports received by a Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying the

Manager or Participating Parties of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

12. If an to the extent Rule 6e-2 and Rule 6e-3(T) are amended, or Rule 6e-3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Funds and/or the Participating Parties, as appropriate, shall take such steps as may be necessary to comply with Rule 6e-2 and Rule 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

13. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of a Fund, such Qualified Plan will executive a fund participation agreement with such Fund. A Qualified Plan will executive an application containing an acknowledgement of this condition at the time of its initial purchase of shares of the Fund.

Conclusion

For the reasons stated above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-15770 Filed 6-16-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22700; 812-10502]

Reich & Tang Distributors L.P., et al.; Notice of Application

June 11, 1997.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Reich & Tang Distributors L.P. ("Reich & Tang") and Equity

Securities Trust ("Trust") (Series 1 and Signature Series), on behalf of themselves and all subsequently issued series ("Subsequent Series") (collectively with Series 1 and Signature Series, the "Series") containing certain types of securities and sponsored by Reich & Tang or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Reich & Tang (collectively with Reich & Tang, the "Sponsor")

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order to permit certain terminating Series of the Trust, a unit investment trust ("UIT"), to sell portfolio securities to certain new Series of the Trust.

FILING DATES: The application was filed on December 31, 1996, and amended on April 21, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 7, 1997, and should be accompanied by proof of service on applicants, in the forms 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 hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 600 Fifth Avenue, New York, New York 10020, attention: Peter J. DeMarco.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942-0583, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Equity Securities Trust (the "Trust") is a UIT registered under the Act that consists of several Series. The Trust is organized under a trust

indenture agreement between the Trust, Reich & Tang as sponsor, and Chase Manhattan Bank as trustee.

2. The investment objective of certain Series of the Trust (each a "Dow Series") is to seek a greater total return than the stocks comprising the DOW Jones Industrial Average ("DJIA"). Each Dow Series acquires a portfolio from among the ten stocks in the DJIA having the highest dividend yields as of a specified date, and hold those stocks for approximately one year. The Sponsor intends that, as each Dow Series terminates, a new Series based on the DJIA will be offered for the next year.

3. Certain other Series of the Trust (each a "Growth Series") contain a portfolio of common stocks of aggressive growth companies. The investment objective of each Growth Series is to seek capital appreciation. Each Growth Series combines the buy and hold philosophy of a UIT with an investment in the aggressive end of the stock market. This approach leads to trusts with shorter terms to take advantage of the rapid changes in this segment of the stock market.

4. The Dow Series and the Growth Series have a contemplated date (a "Rollover Date") on which holders of units in that Series ("Rollover Series") may, at their option, redeem their units in the Rollover Series and receive in return units of a subsequent Series of the same type (a "New Series").¹ The New Series will be created on or about the Rollover Date and will have a portfolio that contains securities of the relevant type, 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 US\$25,000) ("Qualified Securities") on an exchange that is either (a) a national securities exchange that meets the qualifications of section 6 of the Securities Exchange Act of 1934, (b) a foreign securities exchange that meets the qualification set out in the proposed amendments to rule 12d3-1(d)(6) under the Act as proposed by the SEC² and

that releases daily closing prices, or (c) the Nasdaq-National Market System (a "Qualified Exchange").

5. There is normally some overlap from one year to the next in the stocks having the highest dividend yields in the DJIA, and therefore between the portfolios of each Dow Series that is also a Rollover Series and the related new Dow Series. Similarly, the Sponsor anticipates that there will be some overlap from one year to the next in the aggressive growth stocks selected for each Growth Series, and therefore between the portfolios of each Growth Series that is also a Rollover Series and the related new Growth Series.

Therefore, since the New Series may contain securities that duplicate those of the Rollover Series, substantial brokerage commissions occurring on the purchase and sale of such securities could be avoided if the Rollover Series had the ability to sell, and the New Series had the ability to purchase, such duplicate securities from one another.

6. In order to minimize the possibilities of overreaching in such transactions, applicants agree that the Sponsor will certify to the trustee, within five days of each sale from a Rollover Series to a new Series, (a) that the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Qualified Exchange for the sale date of the securities subject to such sale. The trustee then will 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 any 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 units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units of termination of the Rollover 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.

Applicants' Legal Analysis

1. Section 17(a) of the Act makes it unlawful for an affiliated person of a registered investment company to sell securities to or purchase securities from, the company. Each Series will have an identical or common Sponsor. Since the Sponsor of each Series may be considered to control each Series, it is likely that each Series would be considered an affiliated person of the others.

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Under section 6(c) the SEC 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 believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b).³

3. Rule 17a-7 under the Act permits registered investment companies that are affiliates solely 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 certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor the procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that they will comply with all of the provisions of rule 17a-7, other than paragraph (e).

4. Applicants represent that purchases and sales between Series will be consistent with the policy of the Trust, as only securities that otherwise would be brought and sold on the open market

¹ Applications previously obtained an order exempting them from sections 11(a) and 11(c) of the Act to permit them to offer certain exchange and rollover privileges to unitholders of the Trust. Investment Company Act Release Nos. 2222 (Sept. 19, 1996) (notice) and 22273 (Oct. 9, 1996) (order).

² Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3-1). The proposed amended rule defined a "Qualified Foreign Exchange" to mean a stock exchange in a country other than the United States where: (1) trading generally occurred at least four days a week; (2) there were limited restrictions on the ability of registered investment companies to trade their holdings on the exchange; (3) the exchange had a trading volume in stocks for the previous year of at least U.S. \$7.5 billion; and (4)

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."

³ Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. See *Keystone Custodian Funds*, 21 S.E.C. 295, 298-99 (1945). Section 6(c) frequently is used, along with section 17(b), to grant relief from section 17(a) to permit an ongoing series of future transactions.

pursuant to the policy of each Series will be involved in the proposed transactions. Applicants further submit that the current policies of buying and selling on the open market leads to unnecessary brokerage fees on sales of securities and is therefore contrary not only to the policies of the Series, but to the general purposes of the Act.

5. Applicants state that the condition that the securities must be actively traded on a Qualified Exchange protects against overreaching. This limitation ensures that there will be current market prices available and thus an independent basis for determining that the terms of the transaction are fair and reasonable to each participating investment company.

6. In order to minimize the possibilities of overreaching in the proposed transactions, applicants agree that the Sponsor will certify to the trustee, within five days of each sale from a Rollover Series to a New Series, (a) that the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Qualified Exchange for the sale date of the securities subject to such sale. The trustee will then countersign the certificate unless it disagrees with the closing sales price listed on the certificate, and returns the certificate to the Sponsor for verification and/or correction. In addition, the trustee of each Series will review the procedures for sales and make such changes as it deems necessary to comply with sections (a) through (d) of rule 17a-7.

Applicants' Conditions

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

1. Each sale of Qualified Securities by a Rollover 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 Rollover Series and New Series.

3. The trustee of each Rollover Series and New Series will (a) review the procedures discussed in the application relating to the sale of securities from a Rollover Series and the purchase of those securities for deposit in a New Series, and (b) 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 the order will be maintained as provided in rule 17a-7(f).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-15832 Filed 6-16-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38730; File No. SR-CBOE-97-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to the Listing of Options on Mutual Fund Indexes

June 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 4, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. 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 CBOE proposes to trade options on mutual fund indexes. Specifically, CBOE plans to list options on two mutual fund indexes designed by Lipper Analytical Services, Inc. in conjunction with Salomon Brothers Inc. The text of the proposed rule change is available at the Office of the Secretary, CBOE 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 CBOE 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 CBOE 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, Proposed Rule Change

The purpose of the proposed rule change is to enable the CBOE to list options based on mutual fund indexes. CBOE proposes to list options on two mutual fund indexes designed by Lipper Analytical Services, Inc. ("Lipper Analytical" or LAS®) in conjunction with Salomon Brothers Inc.—the Lipper Analytical/Salomon Brothers Growth Fund Index ("Growth Fund Index") and the Lipper Analytical/Salomon Brothers Growth & Income Fund Index ("Growth & Income Fund Index"). Options on the Indexes will allow investors to hedge their risk in mutual funds as well as provide a low-cost means for investors to participate in the mutual fund market. Lipper analytical is a major provider of mutual fund information and currently calculates approximately 100 other mutual fund indexes designed to track specific investment objectives.

Index Design. The Indexes are composed of the 30 largest U.S. funds in each investment objective, based on their total net assets as of the close on the last trading day of December. The Indexes include only those funds that report net asset values ("NAV") through the facilities of the National Association of Securities Dealers Automated quotation System ("NASDAQ"). Some mutual funds are composed of more than one class which have different fees and expenses. If there is more than one class of a specific mutual fund, only the class with the highest total net assets will be included. As of December 31, 1996, the Growth Fund Index had total net assets ("TNA") of \$218.6 billion, an average TNA per component of \$7.3 billion and a median TNA per component of \$4.2 billion. The TNAs ranged from \$2.5 billion to \$54.0 billion. As of the same date, the Growth & Income Fund Index had a TNA of \$241.2 billion, an average TNA per component of \$8.0 billion and a median TNA per component of \$5.0 billion. The TNAs ranged from \$2.5 billion to \$30.9 billion.

Lipper Analytical determines the investment objective of each fund by reviewing both the language in the prospectus and the fund's investment characteristics as shown in the Lipper-Equity Analysis Report on the Weighted Average Holdings of Large Investment Companies. A Growth Fund is described as a fund that normally invests in companies whose long-term earnings are expected to grow significantly faster