

the Fund. Applicant received shares of common stock of the Fund with a net asset value equal to the net value of the assets and liabilities of applicant transferred to the Fund. The shares of the Fund received by applicant were distributed to the shareholders of applicant, *pro rata*. As of April 22, 1994, there were 2,774,788 shares of applicant outstanding with a net asset value of \$42,673,139.53 and a per share value of \$15.38.

6. The expenses incurred in connection with the liquidation and dissolution of applicant, including legal and accounting fees, custodian and transfer agent commissions, and taxes, totaled approximately \$285,576, all of which were borne by applicant's investment adviser, Bank of America National Trust and Savings Association. No brokerage fees were paid in connection with the reorganization.

7. Applicant was liquidated and dissolved under the laws of the State of Maryland on April 12, 1994.

8. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has retained no assets. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

9. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

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

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 97-6834 Filed 3-18-97; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-22557; International Series Rel. No. 1063; 812-10338]

### **Old Mutual South Africa Equity Trust, et al.; Notice of Application**

March 12, 1997.

**AGENCY:** Securities and Exchange Commission (the "SEC" or the "Commission").

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

**APPLICANTS:** Old Mutual South Africa Equity Trust (the "Trust") and Old Mutual Global Assets Fund Limited ("Old Global").

**RELEVANT ACT SECTIONS:** Order requested under section 17(b) of the Act to exempt

applicants from the provisions of section 17(a).

**SUMMARY OF APPLICATION:** Applicants seek an order to permit Old Global to sell certain shares of Investec Bank Ltd. ("Investec") to the Trust.

**FILING DATES:** The application was filed on September 11, 1996, and amended on December 18, 1996, and March 7, 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 April 7, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Clarendon House, 2 Church Street, Hamilton, Bermuda.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Senior Counsel, at (202) 942-0572, or Elizabeth G. Osterman, 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 SEC's Public Reference Branch.

### **Applicants' Representations**

1. The Trust is a registered open-end management investment company organized as a trust under Massachusetts law. The investment objective of the Trust is long-term total return in excess of that of the Johannesburg Stock Exchange (the "JSE") Actuaries All share Index through investment in equity securities of South African issuers that are listed on a securities exchange. Beneficial interests in the Trust are issued solely in private placement transactions to investment companies, common or commingled trust funds, or similar entities which are "accredited investors" within the meaning of Regulation D under the Securities Act of 1933, as well as to certain investment funds organized outside the United States. As of December 4, 1996, 91.21%

of the voting securities of the Trust was owned by a wholly-owned subsidiary of the south African Mutual Life Assurance Society ("Old Mutual").

2. The Global Fund is a mutual fund organized under the laws of Bermuda that invests in a portfolio of South African and international securities. A wholly-owned subsidiary of Old Mutual is the sole shareholder of the Global Fund. The Global Fund is not required to be registered under the Act because its securities are not owned by United States residents. The Trust and the Global Fund are managed by Old Mutual Asset Managers (Bermuda) Limited (the "Adviser"), a wholly-owned subsidiary of Old Mutual.

3. Investec is a South African registered bank. Its ordinary shares and convertible debentures are listed on the JSE. In July of 1996 Investec conducted a private placement of its ordinary shares for the purpose of funding two acquisitions. Old Mutual received an offer from Investec to purchase 1.6 million Investec ordinary shares at U.S.\$19.52. Consistent with practice in South Africa,<sup>1</sup> the price was a 9.46% discount to the shares' closing market price on the trade date. Old Mutual allocated the 1.6 million shares among various portfolios and funds managed by Old Mutual and its affiliates. The Adviser originally wanted the Trust to participate in the Investec placement and informed Old Mutual that it wished to purchase 685,000 shares of Investec for the Trust. However, the Trust was not allocated shares because such an allocation might have violated section 17(a) of the Act and instead the shares were allocated to the Global Trust (the "Investec Shares").

4. The purchase of the Investec Shares by the Global Fund was originally scheduled to close on July 23, 1996 at a purchase price of U.S.\$19.52 per share (the "July Price"). Investec agreed to defer the settlement date to December 2, 1996 (the "Initial Purchase Settlement Date"). In consideration of Investec's agreement to defer the settlement date, the Global Fund agreed to purchase the Investec Shares from Investec on the Initial Purchase Settlement Date at the July Price, which represented a 16.20% discount from the market price per share, plus carrying costs of \$.40 per share. The carrying costs were calculated at a rate of overnight dollar LIBOR from July 23, 1996 through September 30, 1996, and thereafter at a

<sup>1</sup> It is common practice in the South African equity markets for placing my issuers to be offered to large institutional holders of their shares at a discount to the market price.

rate of overnight dollar LIBOR plus 0.5%.

5. Applicants propose that the Global Fund sell the Investec Shares to the Trust. The purchase price to be paid by the Trust will be the July Price plus carrying costs relating to such investment. These carrying costs will consist of (a) reimbursement of the carrying costs actually paid by the Global Fund to Investec in consideration of the deferral of the Global Fund's purchase of the Investec Shares and (b) reimbursement of the Global Fund of its cost of funds (the overnight LIBOR plus 0.5%) from the Initial Purchase Settlement Date through the date on which the Trust purchases the Investec Shares (the "Trust Purchase Date").

#### Applicants' Legal Analysis

1. Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell or purchase securities to or from such registered company.

2. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include, in pertinent part (a) 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, (b) any person directly or indirectly controlling, controlled by, or under common control with such other person or (c) if such other person is an investment company, any investment adviser thereof.

3. The Trust and the Global Fund are both subject to control, as defined in section 2(a)(9) of the Act,<sup>2</sup> by Old Mutual. Also, the Trust and the Global Fund share a common investment adviser. Thus, the Trust and the Global Fund are "affiliated persons" within the meaning of section 2(a)(3). As a result, sales of securities on a principal basis by the Global Fund to the Trust are prohibited by section 17(a) of the Act.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed

transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

5. Applicants believe that the requested relief meets the standards set forth in section 17(b). Applicants believe that the proposed transaction is consistent with the objective and policies of the Trust and that the proposed transaction is consistent with the general purposes of the Act. In addition, the terms of the transaction were presented to the board of trustees of the Trust and at a meeting on February 14, 1997, the board of trustees of the Trust, including a majority of the independent trustees, approved the purchase of the Investec Shares. In evaluating the terms of the transaction, the trustees of the Trust considered the fact that the proposed purchase price to be paid by the Trust will include reimbursement of Global Fund for its payment of Investec's carrying costs and for its own carrying costs.

6. Applicants state that the proposal does not involve dumping. Further, applicants state that the transaction is consistent with the requirements of rule 17a-7,<sup>3</sup> except that the purchase price will be below market price and the Trust and the Global Fund are not affiliated persons solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers.

7. Applicants state that if the Trust were not able to purchase the Investec Shares from the Global Fund on the basis proposed, it would be disadvantaged relative to other portfolios and funds managed by Old Mutual and its affiliates because, unlike those other portfolios and funds that have been allocated shares of the placing, the Trust would, in order to increase its investment in Investec, have to purchase shares on the open market without the benefit of the discount negotiated by Old Mutual. Applicants state that the Trust is not obligated to purchase the Investec Shares if the market price of the shares falls below the proposed purchase price. Thus, the Global Fund bears the investment risk of holding the Investec Shares. Applicants state that the Global Fund has in effect granted an option to the Trust and the Trust has not paid, and is not required to pay, any fee to the Global Fund or any other party for this option.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-6837 Filed 3-18-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38393; File No. SR-CBOE-97-12]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend the Exchange's Rule Concerning the Pre-Opening Application of the Intermarket Trading System

March 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 26, 1997, the Chicago Board Options Exchange, Inc. ("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 self-regulatory organization. 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 amend CBOE Rule 30.72, Pre-Opening Application Rule, with respect to the Pre-Opening Application in the Intermarket Trading System ("ITS"). The proposed amendment is to enhance the operation of the Pre-Opening Application by effectively including circuit breakers as a trading halt situation that will trigger the Pre-Opening Application.<sup>1</sup>

#### 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

<sup>2</sup> Section 2(a)(9) defines "control" as the power to exercise a controlling influence over the management or policies of a company. The section creates a presumption that owners of 25% or more of a company's voting securities control such company.

<sup>3</sup> Rule 17a-7 permits certain purchase and sale transactions between an investment company and certain of its affiliated persons provided that certain conditions are met, including that the transaction be effected at the current market price of the security.

<sup>1</sup> The Commission notes that the majority of other ITS Participants (the American Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, Cincinnati Stock Exchange, National Association of Securities Dealers, New York Stock Exchange, Pacific Stock Exchange) have filed essentially the same proposals to amend each of their rules concerning the Pre-Opening Application. See Securities Exchange Act Release No. 38285 (February 13, 1997), 62 FR 8065 (February 21, 1997).