

By direction of the Board:

**John J. Toner,**

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 97-31397 Filed 11-25-97; 12:27 pm]

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## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of a Revised and Expiring Information Collection; Forms RI 38-117, 38-118, and 37-22

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for review of a revised & expiring information collection. RI 38-117, Rollover Election, is used to collect information from each payee affected by a change in the tax code (Pub. L. 102-318) so that OPM can make payment in accordance with the wishes of the payee. RI 38-118, Rollover Information, explains the election. RI 37-22, Special Tax Notice Regarding Rollovers, provides more detailed information.

Approximately 6,000 RI 38-117 forms will be completed annually. We estimate it takes approximately 30 minutes to complete the form. The annual burden is 3,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418-3208, or E-mail to jmfarron@opm.gov.

**DATES:** Comments on this proposal should be received within on or before December 29, 1997.

**ADDRESSES:** Send or deliver comments to:

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

#### FOR INFORMATION REGARDING

**ADMINISTRATIVE COORDINATION—CONTACT:** Mary Beth Smith-Toomey, Budget &

Administrative Services Division, (202) 606-0623.

**Janice R. Lachance,**

*Acting Director.*

[FR Doc. 97-31167 Filed 11-26-97; 8:45 am]

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## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

#### SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Application to Act as Representative Payee.

(2) *Form(s) submitted:* AA-5, G-478.

(3) *OMB Number:* 3220-0052.

(4) *Expiration date of current OMB clearance:* 2/28/1998.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 20,300.

(8) *Total annual responses:* 20,300.

(9) *Total annual reporting hours:* 16,350.

(10) *Collection description:* Section 12 of the Railroad Retirement Act provides for the payment of benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or a minor. The collection obtains information used by the Railroad Retirement Board for selection of a representative payee and verification of an annuitant's ability to manage payments.

#### ADDITIONAL INFORMATION OR COMMENTS:

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 97-31168 Filed 11-26-97; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC-22899; 812-10568]

### Bank Austria AG and Bank Austria Mortgage Corp.; Notice of Application

November 20, 1997.

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

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") granting relief from all provisions of the Act.

**SUMMARY OF APPLICATION:** Bank Austria AG, acting through its New York Branch ("Bank Austria"), and Bank Austria Mortgage Corp. ("Mortgage Corp.") request an order exempting Mortgage Corp., a real estate investment trust, from all provisions of the Act to permit Mortgage Corp. to hold certain real estate related assets of Bank Austria in order to obtain a more favorable tax treatment on the earnings from these assets.

**FILING DATES:** The application was filed on March 12, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is incorporated in this notice.

**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 December 16, 1997, 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 565 Fifth Avenue, New York, New York 10017.

**FOR FURTHER INFORMATION CONTACT:** Brian T. Hourihan, Senior Counsel, at (202) 942-0526, 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, 450 Fifth

Street, N.W., Washington, D.C. 20549 (tel. (202) 942-8090).

### Applicants' Representations

1. Bank Austria is the largest bank in Austria, where its shares are publicly traded. Among its largest shareholders are Anteilsverwaltung-Zentralsparkasse, a mutual savings bank holding company affiliated with the municipal government of the City of Vienna, Austria, which holds 45% of the voting shares and the Republic of Austria, which holds 18.9% of the voting shares indirectly through a subsidiary. Bank Austria is exempt from the provisions of the Act under rule 3a-6.

2. Mortgage Corp. is a Delaware corporation that has not begun business activities and has not yet issued any stock. When stock is issued, Bank Austria will be the sole holder of Mortgage Corp.'s common stock and Mortgage Corp. will be a wholly-owned subsidiary of Bank Austria.

3. Currently, Bank Austria's New York and Grand Cayman Branches (together, the "New York Branch")<sup>1</sup> own a substantial amount of real estate related assets, the earnings from which are subject to United States federal, New York state, and New York City income taxation. In order to obtain more favorable tax treatment for the earnings from the real estate related assets, Bank Austria would operate Mortgage Corp. as a real estate investment trust ("REIT") for purposes of the Internal Revenue Code of 1986, as amended ("IRC"). To organize and capitalize Mortgage Corp., Bank Austria will acquire 100 shares of common stock and 109 shares of non-voting preferred stock (with a liquidation preference of \$1,000 per share and a right to receive a cumulative dividend of 9 percent per year) ("Preferred Shares") from Mortgage Corp., with an aggregate value of \$50 million. Thereafter, Mortgage Corp. will issue commercial paper, which will be fully guaranteed by Bank Austria, and use the proceeds to acquire approximately \$1 billion of real estate related assets from the New York Branch.<sup>2</sup> The liquidation preference of

the Preferred Shares will be de minimis compared to the net capital of Mortgage Corp. The New York Branch will continue to administer the transferred assets pursuant to a service contract. Bank Austria may, from time to time, make loans with a maximum aggregate outstanding principal amount of approximately \$50 million in order to assist Mortgage Corp. in the management of its cash flow.

4. In order for Mortgage Corp. to qualify as a REIT under Section 856 of the IRC, its shares must be beneficially held by 100 or more persons.<sup>3</sup> Bank Austria therefore will transfer the Preferred Shares to no more than 109 employees of the New York Branch and the head office in Vienna, Austria, as a bonus. Mortgage Corp. will have 110 shareholders: 109 employees of Bank Austria will each hold one Preferred Share and Bank Austria will hold all the shares of common stock. No employee of Bank Austria will (i) receive more than one Preferred Share; (ii) deliver money or other property in return for his or her Preferred Share; or (iii) suffer a reduction of his or her other compensation or benefits as a result of the receipt of a Preferred Share. Because under the IRC, the preferred stock of a REIT must be freely transferable, the holders of Preferred Shares generally cannot be prevented from selling their Shares. Bank Austria will offer to buy from each holder his or her Preferred Share when his or her employment with Bank Austria terminates. A similar offer to buy also will be made when a shareholder receives a bona fide offer from someone who is not an employee of Bank Austria. In each case, if the offer to purchase is accepted, Bank Austria will purchase the Preferred Share at its appraised value. To the extent advisable in connection with the 100-shareholder requirement for REITs under the IRC, any Preferred Shares acquired in this manner by Bank Austria will, from time to time, be transferred as a bonus on the same terms described above to employees who do not then hold any Preferred Shares. Mortgage Corp. will maintain its own stock ledger and will not (i) register any purported transfer of a share of preferred stock to any person (other than Bank Austria) who already is a registered owner of a share or (ii) register a share of preferred stock in more than one name.

### Applicants' Legal Analysis

1. Section 3(a)(1)(C) of the Act defines an "investment company" to include

the future 80% or more of Mortgage Corp.'s assets will be of comparable quality.

<sup>3</sup> See 26 U.S.C. 856(a)(5) 1996.

any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Under section 3(a)(2) of the Act, "investment securities" include all securities except Government securities and those issued by majority-owned subsidiaries or employees' securities companies. Applicants state that, upon commencing operations, approximately 100% of Mortgage Corp.'s future assets (approximately \$275 million), exclusive of Government securities and cash items, will consist of investment securities. Therefore, Mortgage Corp. may be deemed to be an investment company under section 3(a)(1)(C) of the Act.

2. Section 3(c)(5)(C) of the Act excepts from the definition of investment company any person who is not engaged in the business of issuing redeemable securities and who is primarily engaged in purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. Applicants state that this exception is unavailable to them because all or almost all of the assets to be held by Mortgage Corp. would constitute partial-pool certificates which do not qualify as "interests in real estate" under section 3(c)(5)(C) of the Act.

3. Applicants state that Mortgage Corp. will be a wholly-owned subsidiary of Bank Austria, which is a foreign bank that is exempt from the provisions of the Act under rule 3a-6. Applicants also state that Mortgage Corp. will be organized for the purpose of holding certain real estate related assets of the New York Branch of Bank Austria. Moreover, applicants state that Preferred Shares of Mortgage Corp. will be given to a limited number of Bank Austria's employees as a bonus, at no cost, solely for the purpose of enabling Mortgage Corp. to rely on the REIT provisions under the IRC.

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act 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.

5. Applicants request an exemption under section 6(c) from all provisions of the Act. Applicants assert that exempting Mortgage Corp. from the Act

<sup>1</sup> Bank Austria's Grand Cayman Branch is managed from New York.

<sup>2</sup> Approximately 90% of the real estate related assets currently have an AAA rating or are securities issued by the United States government. The assets will consist of approximately \$800 million (or 80%) of Government securities (largely U.S. Treasury Notes and securities issued by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corp., the Government National Mortgage Association, and a small number of securities issued by the Student Loan Marketing Association). The remainder of the assets will consist mostly of collateralized mortgage obligations issued by privately-sponsored securitization vehicles. Bank Austria expects that in

is appropriate in the public interest because allowing Bank Austria to utilize a REIT to hold its real estate related assets in the United States will, under the IRC, allow the head office of Bank Austria to treat the earnings on those assets as not being effectively connected with a United States trade or business and to be taxed on those earnings on a pass-through basis, which will render Bank Austria's United States operations more efficient and less costly. In addition, applicants note that specific provisions of New York state tax law also provide more beneficial tax treatment to REITs than to certain other kinds of entities, including banks. Applicants believe that the combined effect of the treatment of REITs under the IRC and New York state tax law will lower their cost of doing business in the United States and encourage Bank Austria to continue investing in the United States, and perhaps expand its investment activities. Applicants state that the tax-treatment which Bank Austria seeks for its investments in the United States is generally available to REITs and no public interest is served by requiring Bank Austria to hold certain of its assets in its New York Branch rather than in a separate subsidiary.

6. Applicants submit that exempting Mortgage Corp. from the Act is consistent with the protection of investors. Applicants claim that the proposed use of Mortgage Corp. to restructure the manner in which Bank Austria holds its United States real estate related assets will not subject investors to any of the abuses addressed by the Act. Applicants state that all of Mortgage Corp.'s common stock will be owned by Bank Austria and that Preferred Shares will be given to a limited number of employees as a bonus in order to enable Mortgage Corp. to rely on the REIT provisions of the IRC. It is anticipated that there will be fewer than 100 holders of Preferred Shares who are residents of the United States.

7. Applicants submit that granting Mortgage Corp. the requested exemption is consistent with the policies and provisions of the Act. Applicants note that although the Act deals with companies which invest and reinvest in securities, it contains exemptions for some entities which would otherwise come within its purview, in particular entities that are wholly-owned subsidiaries of companies that are themselves exempt from the Act and through which exempt companies conduct their activities and entities that invest in real estate.

### Applicants' Conditions

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

1. Mortgage Corp. will operate as a REIT and its investments will be limited to those permitted for a REIT under the IRC.

2. Mortgage Corp. will issue no securities other than shares of common stock to be held by Bank Austria, Preferred Shares to be given at no cost from time to time to employees of Bank Austria solely when necessary or advisable for maintaining a number of shareholders sufficient to rely on the REIT provisions of the IRC, commercial paper to finance or refinance any of its investments, and a credit agreement with Bank Austria in the approximate amount of \$50,000,000. No participants in or syndication of the credit agreement will be made.

3. No employee will own more than one Preferred Share. Bank Austria will offer to buy at their appraised value Preferred Shares from its employees under the circumstances described in the application. Mortgage Corp. also will not permit there to be more than 109 holders of Preferred Shares at any time.

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. 34-39341; File No. SR-CHX-97-28]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Amending the Exchange's Clearing the Post Policy for Cabinet Securities

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 23, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, 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 Exchange proposes, for a six-month pilot period, to amend interpretation and policy .02 of Rule 10 of Article XX and amend Rule 11 of Article XX relating to clearing the post for cabinet securities. The text of the proposed rule change is available at the Office of the Secretary, the CHX, 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 self-regulatory organization included statements concerning the purpose of and basis for the period 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 self-regulatory organization 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 purpose of the proposed rule change is to amend the Exchange's existing clearing the post policy for cabinet securities for a six-month pilot period. The clearing the post policy is contained in interpretation and policy .02 of CHX Article XX, Rule 10.<sup>2</sup> The Exchange's clearing the post policies were previously contained in several Notices to Members which had been approved by the Commission.<sup>3</sup> These Notices to Members, and their corresponding Approval Orders, explain the Exchange's clearing the post requirements.

In general, the clearing the post policy requires a floor broker or market maker to clear the post by his or her physical presence at the post. The purpose of this

<sup>2</sup> See Securities Exchange Act Release No. 39337 (November 19, 1997) granting immediate effectiveness to SR-CHX-97-30.

<sup>3</sup> Securities Exchange Act Release No. 33806 (March 23, 1994) 59 FR 15248 (Notice of Filing and Immediate Effectiveness of File No. SR-CHX-94-03); Securities Exchange Act Release No. 17766 (May 8, 1981) 46 FR 25745 (Order approving SR-MSE-81-3 and SR-MSE-81-5); and Securities Exchange Act Release No. 28638 (November 30, 1990) 55 FR 49731 (Order approving SR-MSE-90-7).

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