Agreement to be subject to substantial detriment compared with all other MLX shareholders. MLX asserts that the Pending Merger and Related Transactions were designed to satisfy Mr. Morton's conditions regarding control of MLX and to permit MLX to retain its major assets, the NOLs. MLX also states that the Pending Merger and Related Transactions were approved by MLX's board of directors, including MLX's disinterested directors, and will not be effective unless approved by a vote of MLX's shareholders. Further, MLX contends that TCR Affiliates are receiving no additional equity or any fee as a result of the Pending Merger. Finally, MLX asserts that the Pending Merger will permit MLX to acquire a suitable operating business that will result in MLX no longer being subject to the Act. Thus, MLX contends that the terms of the Pending Merger are reasonable and fair and do not involve overreaching.

12. Section 17(d) and rule 17d–1 make it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person unless the transaction has been approved by order of the SEC. MLX requests an exemption pursuant to section 17(d) and rule 17d–1 to the extent necessary to permit MLX (i) to operate and comply with its stock option plans and agreements and (ii) to consummate the Pending Merger and Related Transactions.

13. MLX believes that compliance with section 17(d) of the Act and the rules under the Act would prohibit operation of and compliance with the 1985 Plan, the 1995 Plan, and Mr. Waggoner's Option Agreement. MLX states that these options were granted as compensation to various executive officers and key employees at different times prior to the Wellman Transaction. MLX asserts that inability to realize the value of those options would be unfair to the officers without the result being necessary or appropriate in the public interest.

14. MLX believes that the participation of TCR Affiliates in the Pending Merger and Related Transactions will be on a basis less advantageous than that of other MLX shareholders. MLX contends that TCR Affiliates will be giving up certain benefits retained by other MLX shareholders in order to induce Morton to agree to the Pending Merger and Related Transactions. MLX states that under the Shareholder Agreement, TCR Affiliates will be transferring their voting rights to Mr. Morton in order to give Mr. Morton voting control of MLX. In addition, MLX asserts that the Shareholders Agreement contains severe restrictions on TCR Affiliates' ability to transfer their shares. Further, MLX asserts that under the Voting Agreement, TCR Affiliates have agreed to vote their shares in MLX in favor of the Recaptalization and Pending Merger. MLX states that for the reasons stated above under section 17(a), MLX meets the standards of rule 17d–1. Thus, MLX contends that no regulatory purpose would be served by prohibiting MLX from consummating the Pending Merger and Related Transactions.

15. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. MLX states that all assets invested under the Program are in the custody of qualified banks and the ability of the banks to transfer money in and out is subject to numerous restrictions and checks and balances. Furthermore, MLX states that those assets are insured up to $5 million, an amount substantially in excess of what would be required under a fidelity bond obtained under section 17(g) of the Act. MLX also states that its custodial arrangements are consistent with the substantive requirements of rule 17f–2 under the Act, except for paragraph (f) thereof regarding the requirement for MLX's independent accountants to conduct three actual examinations. MLX also submits that its financial statements are audited annually by its independent accountants.

Applicant's Conditions

Applicant agrees that any order will be subject to the following conditions:

1. During the period of time MLX is exempted from registration under the Act, MLX will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by MLX's board of directors, except that MLX may make equity investments in issuers that are not investment companies, as defined in section 3(a) of the Act (unless an issuer is covered by a specific exclusion from the definition of investment company under section 3(c) other than sections 3(c)(1) and 3(c)(7)), in the following circumstances: (a) in connection with the consideration of the possible acquisition of an operating business as evidenced by a resolution approved by MLX's board of directors, and (b) in connection with the acquisition of majority-owned subsidiaries.

2. MLX will allocate and utilize its accumulated cash and short-term securities for the purpose of funding cash requirements for its existing businesses or far acquiring one or more new businesses.

3. While any order is in effect, MLX's 10–K, 10–Q, and annual reports to shareholders will state that an exemptive order has been granted under sections 6(c) and 6(e) of the Act and that MLX and other persons, in their transactions and relations with MLX, are subject to sections 9, 17(a) (except as discussed in the application), 17(d) (except as discussed in the application), 17(e), 17(f) (except as discussed in the application), and 36 through 53 of the Act as if MLX were a registered investment company.

4. MLX will obtain an amended order from the SEC prior to any material modification of MLX's custodial arrangement in a manner not described in the application.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32651 Filed 12–12–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1684/803–124]

Thomson Technical Data Corporation; Notice of Application

December 9, 1997.

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

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940. (''Advisers Act'').

APPLICANT: Thomson Technical Data Corporation (''Technical Data'').

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 203A(c) from section 203A(a).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to register with the SEC as an investment adviser.

Filing Dates: The application was filed on September 25, 1997 and amended on October 8, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 5, 1998, and should be accompanied by proof of service on applicant, 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. Applicant, Thomson Technical Data Corporation, 22 Pittsburgh Street, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT: Robert J. Leonard, Attorney, at (202) 942–0646, or Jennifer S. Choi, Special Counsel, at (202) 942–0716 (Division of Investment Management, Task Force on Investment Adviser 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.

Applicant's Representations

1. Applicant is a Delaware corporation and an indirect, wholly-owned subsidiary of Thomson Corporation. Applicant publishes various market analyses through the Dow Jones Markets communication network and affords clients the opportunity to contact its analysts by telephone to discuss the published information.

2. Applicant's publications include: comprehensive technical, fundamental and statistical analysis of the world's major government bond and international money and deposit markets; real-time commentary, trading recommendations and yield curve analysis to global participants in the U.S. Treasury market; comprehensive coverage of the mortgage-backed and asset-backed securities markets; and technical and fundamental analysis and trading recommendations for Canadian government bonds, money markets and the Canadian Dollar.

3. Applicant also provides real-time analysis and commentary on financial, political and social events that affect the capital markets of Latin America, Eastern and Central Europe Asia and Japan.[1]

4. Applicant's services are provided to clients on a subscription basis, with rates dependent on the nature and quantity of specific services subscribed to by the client. Applicant has approximately 15,000 subscribers, located in over sixty countries. Almost all of applicant's subscribers are connected with major financial institutions or regulatory bodies, such as Federal Reserve Banks. The largest portion of applicant's client base in the institutional trading desks and sales staff of national and international broker-dealers. The second largest segment of applicant's client base consists of commercial banks. Applicant's other clients include money managers, other brokerage houses and regulators. Less than one-tenth of one percent of applicant's clients are individual investors.

5. Applicant maintains its principal office and place of business in Massachusetts. Applicant is registered as an investment adviser in Massachusetts and New York. Applicant was registered as an investment adviser with the SEC until July 8, 1997.

Applicant's Legal Analysis

1. On October 11, 1996, the National Securities Markets Improvement Act of 1996 was enacted. Title III of the Act, the Investment Advisers Supervision Coordination Act (''Coordination Act''), added new section 203A to the Advisers Act. Under section 203A(a)(1),[2] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the SEC unless the investment adviser (i) has assets under management of not less than $25 million or (ii) is an adviser to an investment company registered under the Investment Company Act of 1940 (''Investment Company Act'') Section 203A(a)(2) defines the phrase ''assets under management'' as the ''securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.'' [3]

2. Applicant states that the Coordination Act was designed to optimize the distribution of regulatory resources and ease the burden of duplicative or inconsistent regulation by dividing advisers into two broad categories: those whose activities are deemed to be national in scope, who are to be regulated primarily by the SEC, and those whose activities are of a more local nature, who are to be regulated primarily by the states.

3. Section 203A(c) of the Advisers Act authorizes the SEC to permit an investment adviser to register with the SEC if prohibiting registration would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [section 203A).'' [4]

4. Applicant states that it does not qualify for SEC registration. Applicant states that it has no assets under management, does not act as an investment adviser to a registered investment company, and does not qualify for any exemption under rule 203A–2. Applicant also maintains its principal office and place of business in Massachusetts, which regulates its investment adviser activities.

5. Applicant states that it would be inconsistent with the purposes of the Coordination Act to prohibit applicant from registering with the SEC because it provides services to institutional clients whose activities affect billions of dollars in assets and have a significant effect on national securities markets. Applicant believes that it exerts an influence on the national markets similar to that exerted by both nationally recognized statistical rating organizations (''NRSROs'') and pension consultants.

6. Applicant states that almost all of its clients are institutional traders, sales people, bankers and money managers who collectively move billions of dollars of assets through the fixed-income, foreign exchange and capital markets. Applicant states that institutional trading desks of national and international broker-dealers and money managers that subscribe to applicant's real-time analyses, commentary and trading recommendation publications use this information to assist them in evaluating instruments and market conditions when making purchase and sale decisions and determining trading strategies. Applicant believes that purchases, sales, and implementations of trading strategies result in billions of dollars of fixed-income and foreign exchange transactions moving through the national markets. Applicant also asserts that its clients, such as the Federal Reserve Banks and other federal and state regulatory bodies, exert their own special influence on the national markets.

7. Applicant states that the SEC exempted from the prohibition on federal registration NRSROs recognizing that, although NRSROs only provide impersonal advisory services and do not manage any assets, these advisers'

[1] Applicant states that, because certain of its publications relate to the futures markets, applicant is registered with the Commodity Futures Trading Commission as a commodity trading adviser.

[2] 15 U.S.C. 80b–3a(a)(1).

[3] 15 U.S.C. 80b–3a(a)(2).

[4] 15 U.S.C. 80b–3a(c).

activities have a significant effect on the national securities markets, thereby making them appropriate candidates for federal registration under the conceptual framework established by the Coordination Act.[5]

8. Applicant states that the SEC also exempted from the prohibition on Federal registration pension consultants who provide investment advice to plans with assets having an aggregate value of at least $50 million. Applicant states that, like NRSROs, pension consultants do not exercise direct investment discretion over client portfolios, but their advice affects the management of billions of dollars of assets.[6] Applicant states that the SEC concluded that it would be inconsistent with the purposes of the Coordination Act for pension consultants to be regulated by the states rather than the federal government because of their effect on national markets.

9. Applicant also asserts that the states should have little or no interest in regulating applicant, which has a majority of institutional clients. Less than one-tenth of one percent of applicant's clients are individual investors. Applicant submits that the primary interest of the states is not in the protection of institutional clients.

10. Applicant states that, although the Coordination Act generally preempts state law with respect to SEC-registered advisers and their supervised persons, it does permit states to license, register or otherwise qualify any ''investment adviser representative'' who has a place of business within the state. Applicant asserts that the Commission, in defining investment adviser representative, determined that states should not regulate either those supervised persons who service a predominantly institutional clientele or those who render only impersonal services. Applicant believes that, by expanding the class of advisers who qualify for federal registration and restricting the class of supervised persons subject to state control, the SEC effectuated Congress' intent to limit state regulation to activities that have a primarily localized effect and that institutional advisory activities be regulated by the federal government.

[5] Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1601 (Dec. 20, 1996), 62 FR 68480 at Section II.D.1 (release proposing rules to implement amendments to the Advisers Act).

[6] *Id.* at Section II.D.2.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32653 Filed 12–12–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39411; File No. SR–Amex–97–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Proposed Revisions to the Exchange's Policy Regarding the Use of Wireless Data Communications Devices

December 8, 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 October 29, 1997, the American Stock Exchange, Inc. (''Amex'' 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 Exchange is proposing to amend its policy regarding the use of wireless data communications devices on the trading floor. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 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 Exchange has undertaken to build an infrastructure (''Infrastructure'') to support wireless data communications on the Trading Floor by members and Exchange staff. On September 26, 1996, the Commission approved various rule changes and a policy regarding the use of wireless data communications devices on the Trading Floor (the ''Wireless Communications Policy'').

The Exchange developed the Wireless Communications Policy based upon a design for the Infrastructure that called for all wireless data transmissions to pass through a gateway (''Gateway''). This would have permitted the Exchange to make a record of all wireless communications and to unilaterally ''throttle'' all, or selected, member communications in the event that such transmissions used a disproportionate amount of the available radio frequency or threatened to exceed available radio frequency capacity.

In late 1996, the Exchange reviewed the design of the Infrastructure. During this review, the Exchange determined that there was no immediate need for throttling and that it was unclear when it might become necessary. The Exchange concluded that since there was no need for throttling, there was no need for a Gateway and that, if and when necessary, throttling could be accomplished by the member firms without a Gateway. As a result of this review, the Exchange determined that since the Gateway was unnecessary, costly for both the Exchange and its members, and difficult to develop and implement, the Exchange would build the Infrastructure without a Gateway. The Exchange, accordingly, is now proposing to modify the Wireless Communications Policy to reflect the redesign of the Infrastructure to eliminate the Gateway.

As noted above, the Gateway would have permitted the Exchange to record all wireless communications. This would have created a data base at the Exchange that would have largely duplicated records already maintained by member firms pursuant to SEC and Exchange rules. The elimination of the Gateway will eliminate this duplicative data base. The revised Wireless Communications Policy, accordingly, will state that members that have developed wireless technology will be responsible for maintaining such records as may be required by Exchange