

fully the possible impact of the Actual Size Rule on the Nasdaq market. The Commission also believes that approving Amendment No. 4 to the proposed rule change will provide it with greater time to review the public comments before determining whether to expand the Actual Size Rule to all Nasdaq stocks on a permanent basis.

For the reasons discussed above, the Commission finds that the NASD's proposal is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities association and has determined to approve the extension of the pilot through June 30, 1998, on an accelerated basis.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in order to continue the pilot on an uninterrupted basis for an additional brief period of time.

Accordingly, the Commission believes that the proposed rule change (SR-NASD-97-26) is consistent with Sections 15A(b)(6) and (b)(9) of the Exchange Act<sup>14</sup> and *it is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>15</sup> that the proposed rule change, SR-NASD-97-26, be and hereby is approved through June 30, 1998.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-26 and should be submitted by April 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-8361 Filed 3-30-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23077; 812-11060]

### Piper Funds Inc., et al.; Notice of Application

March 25, 1998.

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

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act.

*Summary of the Application:* The requested order would permit the implementation, without prior shareholder approval, of new investment advisory and sub-advisory agreements ("Interim Agreements") for a period of up to 120 days following consummation of the merger between Piper Jaffray Companies Inc. ("Piper Jaffray") and U.S. Bancorp ("USB") (but in no event later than August 31, 1998) (the "Interim Period"). The order also would permit Piper Capital Management Incorporated (the "Adviser"), Edinburgh Fund Managers plc ("Edinburgh"), Federated Advisers ("Federated"), and Salmon Brothers Asset Management Inc ("Salomon") (Edinburgh, Federated, and Salomon collectively, the "Sub-Advisers") to receive all fees earned under the Interim Agreements following shareholder approval.

*Applicants:* Piper Funds Inc. ("PFI"), Piper Funds Inc.-II ("PFI-II"), Piper Global Funds Inc. ("PGF"), Piper Institutional Funds Inc. ("PIF"), each on behalf of its separate investment portfolios, American Government Income Fund Inc. ("AGF"), American Government Income Portfolio, Inc. ("AAF"), American Opportunity Income Fund Inc. ("OIF"), American Municipal Term Trust Inc. ("AXT"), American

Municipal Term Trust Inc.-II ("BXT"), American Municipal Term Trust Inc.-III ("CXT"), Minnesota Municipal Term Trust Inc. ("MNA"), Minnesota Municipal Term Trust Inc.-II ("MNB"), American Municipal Income Portfolio Inc ("XAA"), Minnesota Municipal Income Portfolio Inc. ("MXA"), American Strategic Income Portfolio Inc. ("ASP"), American Strategic Income Portfolio Inc.-II ("BSP"), American Strategic Income Portfolio Inc.-III ("CSP"), American Select Portfolio Inc. ("SLA"), The Americans Income Trust Inc. ("XUS"), Highlander Income Fund Inc. ("HLA"), (collectively, "Piper Funds"), the Adviser, and the Sub-Advisers.

*Filing Dates:* The application was filed on March 12, 1998.

*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 20, 1998, 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 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. Piper Funds, 222 Sought Third Street, Minneapolis, MN 55402-3204; Edinburgh Fund Managers plc, Donaldson House, 97 Haymarket Terrace, Edinburgh, Scotland EH12, 5HD; Federated Advisers, Federated Investors Tower, Pittsburgh, PA 15222-3779; Salomon Brothers Asset Management Inc, Seven World Trade Center, New York, NY 10048.

**FOR FURTHER INFORMATION CONTACT:** Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, 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 at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

### Applicants' Representations

1. The Piper Funds are each organized as a Minnesota corporation. PFI, PFI-II,

<sup>14</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change will provide the Commission and public commenters with additional time to evaluate the March 1998 Study. Since the Commission believes that the data discussed above indicates that the pilot has not harmed the Nasdaq market thus far, the net effect of approving the proposed rule change will be positive. 15 U.S.C. 78c(f).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

PGF, and PIF are each registered under the Act as an open-end management investment company. PFI is organized as a series investment company and currently offers twelve separate portfolios. PFI-II offers a single portfolio, PGF is organized as a series company and currently offers two portfolios. PIF offers a single portfolio. The Piper Funds also include the following closed-end investment companies, each of which is registered under the Act: AGF, AAF, OIF, AXT, BXT, CXT, MNA, MNB, XAA, MXA, ASP, BSP, CSP, SLA, XUS, and HLA.

2. The Adviser, a wholly-owned subsidiary of Piper Jaffray, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser serves as investment adviser to the Piper Funds. The Adviser also serves as sub-adviser to The Monitor Mortgage Securities Fund (the "Monitor Fund") (Monitor Fund, together with the Piper Funds, the "Funds"), under a sub-advisory agreement with the Huntington Trust Company ("Huntington").

3. Edinburgh, a wholly-owned subsidiary of Edinburgh Fund Managers Group plc and an investment adviser registered under the Advisers Act, serves as sub-adviser to the Pacific-European Growth Fund and Emerging Markets Growth Fund series of PGF. Federated, a subsidiary of Federated Investors and an investment adviser registered under the Advisers Act, serves as sub-adviser to HLA. Salomon, an indirect subsidiary of Travelers Group Inc. and an investment adviser registered under the Advisers Act, serves as sub-adviser to XUS.

4. On December 14, 1997, USB and Piper Jaffray entered into an agreement and plan of merger pursuant to which USB will acquire Piper Jaffray and its direct and indirect subsidiaries (the "Merger"). On the date and at the time when the Merger becomes effective (the "Effective Date"), a wholly-owned subsidiary of USB, organized for the purpose of participating in the Merger, will merge into Piper Jaffray and Piper Jaffray will continue as the surviving corporation and a wholly-owned subsidiary of USB. The consummation of the Merger is subject to certain closing conditions, including the approval of the shareholders of Piper Jaffray and the receipt of certain regulatory approvals. Piper Jaffray and USB anticipate that the Merger will occur during the second quarter of 1998.

5. Applicants believe that the Merger may result in the assignment and thus automatic termination of the existing investment advisory agreements between the Piper Funds and the

Adviser, the sub-advisory agreements between the Adviser and the Sub-Advisers, and the sub-advisory agreement between the Adviser and Huntington (collectively, the "Existing Agreements"). Applicants request an exemption to permit (i) the implementation prior to obtaining shareholder approval, of the Interim Agreements, and (ii) the Adviser and the Sub-Advisers to receive, upon approval of the Fund shareholders, any and all fees earned under the relevant Interim Agreement during the Interim Period. Applicants state that the terms and conditions of the corresponding Existing and Interim Agreements will be the same, except with respect to their effective and termination dates and the inclusion of escrow arrangements described below.

6. Applicants state that the board of directors of each Fund (collectively, the "Boards") will convene regular or special meetings on a date prior to the Effective Date to discuss the Merger and its implications for the respective Funds. Applicants represent that in connection with these meetings the Boards will receive from representatives of the Adviser, the Sub-Advisers, and USB such information as they may request as reasonably necessary to evaluate, among other things, the terms of the proposed Interim Agreements and to determine whether the Interim Agreements are in the best interests of the respective Funds and their shareholders. Applicants state that each Interim Agreement will not be implemented unless (i) the respective Board, including in each case a majority of the Board members who are not "interested persons," as that term is defined in section 2(a)(19) of the Act, of the Fund (the "Independent Directors"), after a full evaluation, with the advice and assistance of independent counsel, votes, in the manner prescribed in section 15(c) of the Act, to approve the Interim Agreement; and (ii) the Board votes to recommend that shareholders of the Fund approve the Interim Agreement during the 120-day period commencing on the Effective Date.<sup>1</sup>

7. Fees earned under the Interim Agreements during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated bank. The escrow agent will release the amounts held in the escrow account (including any interest earned): (i) to the Adviser and, if applicable, any Sub-Adviser, only upon approval of the

Interim Agreements by the shareholders of the relevant Fund; or (ii) to the relevant Fund, in the absence of approval by its shareholders. Before amounts are released from the escrow account, the Board will be notified.

### Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the registered investment company. Section 15(a) further requires that the written contract provides for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, as a result of the Merger, Piper Jaffray will become a wholly-owned subsidiary of USB. Applicants believe, therefore, that the Merger may result in the "assignment" of the Existing Agreements, thus terminating the Agreements pursuant to their terms.

3. Rule 15a-4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (i) the new contract is approved by that company's board of directors (including a majority of non-interested directors); (ii) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (iii) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that they may not be entitled to rely on rule 15a-4 because of the benefits that Piper Jaffray and the Adviser will receive from the Merger.

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

<sup>1</sup> To the extent that the Board of any Fund cannot meet prior to the Effective Date, applicants acknowledge that such Fund may not rely on the exemptive relief requested in the application.

the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the timing of the Merger was determined in response to a number of business concerns substantially unrelated to the Funds or the Adviser. Applicants state that the pending Effective Date and the form of transaction deemed most appropriate by Piper Jaffray and USB do not permit an opportunity to secure prior approval of the Interim Agreements by the Funds' shareholders. Applicants state that, in addition, because it is likely that many of the Funds will be merged into corresponding funds of the First American family of funds during the Interim Period ("Family Fund Combination"), the granting of the requested order will allow the Funds to undertake a single proxy solicitation for obtaining shareholder approval of the Merger, the Interim Agreements, and any Family Fund Combination. Applicants believe a single proxy solicitation will, by eliminating unnecessary burdens and reducing shareholder confusion, be in the best interests of the Funds and their shareholders.

6. Applicants submit that they will take all appropriate actions to prevent any diminution in the scope or quality of services provided to the Funds during the Interim Period.

Applicants state that the Existing Agreements were approved by the Board and the shareholders of the Funds. Applicants represent that the Interim Agreements will have the same terms and conditions as the Existing Agreements, except for the dates of commencement and termination and the inclusion of escrow arrangements. Accordingly, applicants assert that each Fund will receive, during the Interim Period, substantially identical investment advisory and/or sub-advisory services, provided in the same manner, as it received prior to the Effective Date. Applicants state that, in the event there is any material change in the personnel of the Adviser or Sub-Adviser providing services under the Interim Agreements during the Interim Period, the Adviser or Sub-Adviser, as the case may be, will apprise and consult the Boards to assure that the Boards, including a majority of Independent Directors, are satisfied that the services provided by the Adviser or Sub-Adviser will not be diminished in scope or quality.

7. Applicants contend that to deprive the Adviser and the Sub-Advisers of their customary fees during the Interim Period would be an unduly harsh and unreasonable penalty. Applicants note that the fees payable to the Adviser and

the Sub-Advisers under the Interim Agreements will not be released to the Adviser or, if applicable, any Sub-Adviser, by the escrow agent without the approval of the Fund shareholders.

#### Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. Each Interim Agreement will have the same terms and conditions as the respective Existing Agreement, except for the effective and termination dates and the inclusion of the escrow arrangements.

2. Fees earned by the Adviser or any Sub-Adviser during the Interim Period in accordance with an Interim Agreement will be maintained in an interest-bearing escrow account with an unaffiliated bank, and amounts in such account (including interest earned on such paid fees) will be paid to the Adviser and, if applicable, any Sub-Adviser, only upon approval of the related Fund shareholders or, in the absence of such approval, to the related Fund.

3. Each Fund will hold a meeting of shareholders to vote on approval of the related Interim Agreement or Interim Agreements on or before the 120th day following termination of the Existing Agreements, but in no event later than August 31, 1998.

4. Piper Jaffray, USB and/or one or more subsidiaries of the foregoing, but not the Funds, will pay the costs of preparing and filing the application and the costs relating to the solicitation of the approval of the Funds' shareholders of the Interim Agreements.

5. The Adviser and the Sub-Advisers will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds under the Interim Agreements will be at least equivalent, in the judgment of the respective Boards, including a majority of the Independent Directors, to the scope and quality of services provided under the Existing Agreements. In the event of any material change in personnel providing services pursuant to the Interim Agreements, the Adviser or a Sub-Adviser, as the case may be, will apprise and consult the Boards of the affected Funds to assure that such Boards, including a majority of the Independence Directors, are satisfied that the services provided by the Adviser or such Sub-Adviser will not be diminished in scope or quality.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39794; File No. SR-NASD-98-17]

#### Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Integrated Order Delivery and Execution System

March 25, 1998.

On February 19, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a series of proposed rule changes.<sup>1</sup> The NASD is proposing new rules and amendments to existing NASD rules to establish an integrated order delivery and execution system ("System").

As proposed, the new System will have three types of registered executing participants (as it does currently): market makers, electronic communication networks ("ECNs"), and UTP exchange specialists. Executing participants' quotes will be displayed on Nasdaq workstations, disseminated through information vendors, and accessible by System participants. Registered NASD members, and certain customers they sponsor, will be able to deliver various sized orders (up to 999,999 shares, if the Actual Size Rule is expanded to all Nasdaq stocks<sup>2</sup> through the new System to electronically access the displayed quotations.

The System features a voluntary central limit order file that all market participants will be able to access either directly or through a System participant. System participants will be able to send

<sup>1</sup> Exchange Act Release No. 39718 (March 4, 1998) 63 FR 12124 (March 12, 1998) (File No. SR-NASD-98-17). As originally noticed, the comment period ran through April 2, 1998.

<sup>2</sup> The Actual Size Rule allows market makers to quote their actual size by reducing the minimum quotation size requirement to one normal unit of trading (i.e., 100 shares). The Actual Size Rule currently applies to 150 Nasdaq stocks on a pilot basis. The NASD has filed a proposal to expand the pilot program to cover all Nasdaq stocks permanently. See Exchange Act Release No. 39760 (March 16, 1998) 63 FR 13894 (March 23, 1998).