

In making the decision to withdraw its Security from listing on the PCX, the Company considered the expense of maintaining the dual-listing of its Security on the PCX and the NYSE. The Company does not see any particular advantage in the dual-listing of its Security, since trading in the Security on the PCX has come to represent a very small portion of the Company's total trading volume.

By letter dated December 5, 1997, the PCX informed the Company that it had no objection to the withdrawal of the Company's Security from listing on the PCX.

By reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before February 5, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-1490 Filed 1-20-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA-1694/803-128]

### Nikko Research Center (America), Inc.; Notice of Application

January 15, 1998.

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

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

**APPLICANT:** Nikko Research Center (America), Inc.

**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 December 3, 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 February 9, 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, Nikko Research Center (America), Inc., One World Financial Center, Tower A, 200 Liberty Street, New York, New York 10281.

**FOR FURTHER INFORMATION CONTACT:** Kathy D. Ireland, Attorney, at (202) 942-0530, 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 corporation organized under the laws of New York and a wholly-owned subsidiary of the Nikko Research Center, Ltd. ("NRC"), an unregistered investment adviser located in Japan, which is affiliated with the Nikko Securities Co., Ltd. ("NST"), an integrated financial services company also located in Japan.

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

3. Pursuant to separate service agreements between applicant and NRC, NST, and Nikko Securities Co. International, Inc. ("NSI"), a registered broker-dealer located in the United States and an indirect wholly-owned subsidiary of NST, applicant provides NRC, NST, and NSI with reports concerning national and international political, economic, financial, and investment matters to assist them with the services that they provide to their clients. Some of these reports may be

distributed directly by NSI and NST to their institutional clients, and NST may distribute such reports to certain retail clients, all of whom are in Japan. NSI does not have retail clients.

4. Applicant's analysts, strategists, and economists speak at seminars for clients of NSI, all of which are U.S. affiliates of Japanese-based banking institutions. NSI mails seminar materials directly to other institutional clients.

5. Applicant's analysts and economists also periodically meet directly with certain institutional clients of NSI and NST, including U.S. subsidiaries of Japanese regional banks, insurance companies, and Japanese banks and trust companies.<sup>1</sup> The foregoing are the only direct contacts applicant has with clients of NSI and NST. Applicant does not and will not have any direct contacts with any clients of NRC.

6. Applicant receives compensation solely from NRC, NSI and NST in an amount equivalent to its total annual operational cost plus 3%.

### 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, added new section 203A to the Advisers Act. Under section 203A(a)(1),<sup>2</sup> 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."<sup>3</sup>

2. Applicant submits that section 203A of the Advisers Act is intended to streamline the registration and oversight of investment advisers by reallocating responsibilities between the SEC and the states. Applicant notes that Congress determined that the states should be responsible for regulating investment advisers "whose activities are likely to

<sup>1</sup> Although NST has retail as well as institutional clients, applicant only has direct contact with certain of NST's institutional clients.

<sup>2</sup> 15 U.S.C. 80b-3a(a)(1).

<sup>3</sup> 15 U.S.C. 80b-3a(a)(2).

be concentrated in their home state," but "[l]arger advisers, with national businesses," should be regulated by the SEC and be "subject to national rules."<sup>4</sup>

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 purpose of [section 203A]."<sup>5</sup>

4. Applicant states that it does not qualify for SEC registration under section 203A. Applicant submits that it does not have assets under management or act as an investment adviser to an investment company registered as such under the Investment Company Act. Applicant also states that it does not satisfy any of the exemptions from the prohibition on registration provided in rule 203A-2 under the Advisers Act.

5. Applicant asserts that it would be inconsistent with the purposes of section 203A if it were prohibited from registering with the SEC. Applicant submits that its activities, like those of the nationally recognized statistical rating organizations ("NRSROs") and pension consultants, affect the national and international securities markets.

6. Applicant states that its research reports focus primarily on issues of national and international scope and significance. Applicant states that its advisory services are provided to only three clients for compensation, and that those entities utilize applicant's services in connection with the delivery of services to their own clients, many of which are substantial institutional investors, such as banks, insurance companies, and trust companies located throughout the world, that collectively manage and/or invest billions of dollars in both foreign and domestic securities. Applicant asserts that, the significant resources of these institutional investors, which may utilize its research and analyses in connection with their own investment management activities, substantially affect both national and international securities markets.<sup>6</sup>

7. Applicant states that the SEC exempted NRSROs from the prohibition on SEC registration although they typically do not have assets under management or act as investment advisers to registered investment companies because their activities have

a significant effect on the national securities markets and the operation of federal securities laws.<sup>7</sup>

8. Applicant also states that the SEC exempted certain pension consultants from the prohibition on SEC registration even though they may not have assets under management or act as investment advisers to registered investment companies because they have a direct effect on the management of billions of dollars of plan assets, which in turn affects the national markets.<sup>8</sup>

9. Applicant also submits that it would be inconsistent with the purposes of section 203A(b)(1)(A) if it were subject to state regulation. Applicant states that, pursuant to this section, Congress preserved the states' ability to regulate certain investment adviser representatives of investment advisers registered with the SEC if those representatives provide services to retail clients. Applicant submits that Congress determined that the primary interest of the states is to maintain oversight of representatives with retail, and not institutional, clientele because the activities of these representatives predominately affect local markets. Applicant states that in defining the term "investment adviser representative" for purposes of section 203A(b), the SEC noted its belief that it is consistent with the intent of Congress to distinguish between retail and other clients.<sup>9</sup>

10. Applicant states that it does not provide investment advisory services directly to retail clients. Applicant submits that its three clients are institutions whose activities are national and international in scope. Further, applicant states that the advisory services that it provides to its clients are primarily used by such clients in connection with the services that they provide to their own clients, which are almost exclusively institutional.<sup>10</sup> Applicant states that, because its services are provided primarily to institutions, it is not the sort of investment adviser that Congress intended to be subject to regulation by and registration with the states.

11. Applicant believes that Congress intended that national investment advisers remain subject to SEC oversight, in part to focus SEC

supervision and examination resources on investment advisers involved in interstate commerce. Applicant contends that the national and international nature of its activities lends itself to supervision and examination by one regulatory body.

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

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

[FR Doc. 98-1491 Filed 1-21-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23000; 812-10876]

### Saratoga Advantage Trust, et al.; Notice of Application

January 14, 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 and rule 18f-2 under the Act, and from certain disclosure requirements under the Act.

**SUMMARY OF APPLICATION:** The order would permit the investment adviser to an open-end registered investment company to enter into subadvisory contracts with subadvisers without receiving shareholder approval, and grant relief from certain disclosure requirements regarding advisory fees paid to subadvisers.

**APPLICANTS:** Saratoga Capital Management (the "Manager"), and the Saratoga Advantage Trust (the "Trust").<sup>1</sup>

**FILING DATES:** The application was filed on November 24, 1997, and amended on December 31, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included 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

<sup>4</sup> S. Rep. No. 293, 104th Cong., 2d Sess. 4 (1996).

<sup>5</sup> 15 U.S.C. 80b-3a(c).

<sup>6</sup> Applicant also notes that its services reach certain institutional investors even more directly. As described above, applicant gives seminar presentations for certain of NSI's clients, and holds individual meetings directly with certain clients of NSI and NST, all which are institutional investors with a national or international presence.

<sup>7</sup> Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 at Section II.D.1. (May 15, 1997) [62 FR 28112 (May 22, 1997)].

<sup>8</sup> *Id.* at Section II.D.2.

<sup>9</sup> *Id.* at Section II.F.1.

<sup>10</sup> Of applicant's three clients, only NST has retail clients, all of whom are outside the United States. Applicant has no direct contacts with any of NST's retail clients.

<sup>1</sup> Applicants request that the relief apply to any open-end registered investment company for which the Manager or any entity controlling, controlled by, or under common control with the Manager acts as investment adviser. All existing investment companies that currently intend to rely on the order have been named as applicants, and any other existing or future investment companies that subsequently rely on the order will comply with the terms and conditions in the application.