

defined in rule 2830 of the NASD's Conduct Rules).

2. Before the next meeting of an Investing Fund's Board held for the purpose of voting on an advisory contract under section 15 of the Act, INVESCO will provide the Board with specific information regarding the approximate cost to INVESCO of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of such Investing Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for an Investing Fund, the Board, including a majority of the Independent Directors or Trustees, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by INVESCO should be reduced to account for the reduced services provided to the Investing Fund by INVESCO as a result of Uninvested Cash being invested in the Money Market Funds. An Investing Fund's minute books will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Investing Funds will be permitted to invest Uninvested Cash in, and hold shares of, a Money Market Fund only to the extent that the Investing Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund, Money Market Fund, and any future Fund that may rely on the order requested will be advised by INVESCO.

6. No Money Market Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23790; 812-11492]

MFS Series Trust XI, et al.; Notice of Application

April 19, 1999.

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

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit in-kind redemptions of shares of certain registered open-end management investment companies held by certain affiliated shareholders.

APPLICANTS: MFS Series Trust XI, MFS Institutional Trust and MFS Variable Insurance Trust (each a "Fund" and collectively, the "Funds") and Massachusetts Financial Services Company ("MFS") and Vertex Investment Management, Inc. ("Vertex," and together with MFS, the "Advisers").

FILING DATES: The application was filed on February 1, 1999, and amended on April 1, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 14, 1999, 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, Massachusetts Financial Services Company, 500 Boylston Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: George J. Zornada, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch,

450 Fifth Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. Each Fund is registered under the Act as an open-end management investment company, and organized as a Massachusetts business trust. MFS, a Delaware corporation, serves as investment adviser to one series of MFS Series Trust XI and to each of the series of MFS Institutional Trust and MFS Variable Insurance Trust. Vertex, a Delaware corporation and a wholly-owned subsidiary of MFS, serves as investment adviser to the other series of MFS Series Trust XI. Each of the Advisers is registered as an investment adviser under the Investment Advisers Act of 1940.

2. Applicants request relief to permit the Funds to satisfy redemption requests made by any shareholder of a Fund who, at the time of such redemption requests, is an "affiliated person" of a Fund solely by reason of owning, controlling, or holding with the power to vote, five percent or more of the Fund's shares ("Covered Shareholder") by distributing portfolio securities in-kind. The relief sought would not extend to shareholders who are "affiliated persons" of a Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

3. Each Fund's prospectus and statement of additional information provide that, in limited circumstances, the Fund may satisfy all or part of a redemption request by a distribution in-kind of portfolio securities. The boards of trustees of the Funds ("Boards") including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Non-Interested Trustees"), have determined that it would be in the best interests of the Funds and their shareholders to pay to a Covered Shareholder the redemption price for shares of the Funds in-kind to the extent permitted by certain Funds' elections to be governed by rule 18f-1 under the Act.

Applicants' Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the registered investment company. Section 2(a)(3)(A) of the Act defines "affiliated person" of another person to include any person owning 5% or more of the outstanding voting securities of the other person. Applicants state that to the extent that

an in-kind redemption could be deemed to involve the purchase of portfolio securities (of which the Fund is not the issuer) by a Covered Shareholder, the proposed redemptions in-kind would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act, 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.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act to permit Covered Shareholders to redeem their shares of the Funds in-kind. The requested order would not apply to redemptions by shareholders who are affiliated persons of a Fund within the meaning of sections 2(a)(3)(B) through (7) of the Act.

5. Applicants submit that the terms of the proposed in-kind redemptions by Covered Shareholders meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicants assert that neither the Fund nor the Covered Shareholder will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Adviser nor the Covered Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicants further state that the portfolio securities to be distributed will be valued according to an objective, verifiable standards and that the in-kind redemptions are consistent with the investment policies of the Fund. Applicants also state that the proposed in-kind redemption are consistent with the general purposes of the Act because the Covered Shareholders would not receive any advantage not available to other redeeming shareholders.

Applicants' Conditions

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

1. The securities distributed pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which market quotations are available.

2. The In-Kind Securities will be distributed by each Fund on a *pro rata* basis after excluding (a) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (c) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (d) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); and (e) other assets which are not readily distributable (including receivables and prepaid expenses). In addition, portfolio securities representing fractional shares, odd lot securities and accruals on such securities may be excluded from portfolio securities distributed in-kind to a Covered Shareholder. Cash will be paid for the portion of the in-kind distribution represented by the excluded assets set forth above, less liabilities (including accounts payable).

3. The In-Kind Securities distributed to the Covered shareholders will be valued in the same manner as they would be valued for purposes of computing each Fund's net asset value.

4. The Funds' Boards, including a majority of the Non-Interested Trustees, will determine no less frequently than annually: (a) Whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of each effected Fund as reflected in the prospectus. In addition, the Board will

make and approve such changes as it deems necessary in the procedures for monitoring the Funds' compliance with the terms and conditions of this application.

5. The Funds will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of such redemption setting forth a description of each security distributed in-kind, the identity of the Covered Shareholder, the terms of the in-kind distribution and the information or materials upon which the valuation was made.

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. 34-41305; File No. SR-DTC-99-08]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Amendments to its Organization Certificate and By-Laws

April 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 18, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on April 12, 1999, amended the proposed rule change (File No. SR-DTC-99-08) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will amend its Organization Certificate and By-Laws: (1) to increase the size of its Board of Directors, (2) to redesignate its capital stock, and (3) to modernize its Certificate of Organization. The amendments are subject to stockholder approval. DTC anticipates implementing

¹ 15 U.S.C. 78s(b)(1).