

7. No trustee or officer of the Investment Company or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such person) any interest in a Subadviser except for ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either a Subadviser of an entity that controls, is controlled by, or is under common control with a Subadviser.

8. Within 90 days of the hiring of any new Subadviser, shareholders will be furnished all information about the new Subadviser that would be contained in a proxy statement, including any change in such disclosure caused by the addition of the new Subadviser. Each Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of a Subadviser.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24226; 812-11668]

### Manufacturers Investment Trust and Manufacturers Securities Services, LLC; Notice of Application

December 29, 1999.

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

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

**Summary of Application:** Applicants, Manufacturers Investment Trust (the "Trust") (formerly NASL Series Trust) and Manufacturers Securities Services, LLC (the "Adviser") (formerly NASL Financial Services, Inc.), request an order that would permit applicants to enter into and materially amend sub-advisory agreements without

shareholder approval. The order would supersede a prior order.

**Filing Dates:** The application was filed on June 22, 1999 and amended on October 8, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**Hearing or Notification of Hearing:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 pm on January 24, 2000 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 Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549-0609. Applicant, c/o John W. Blouch, Esq., Jones & Blouch L.L.P., 1025 Thomas Jefferson St., NW, Suite 405 West, Washington, DC 20007.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Pisto, Senior Counsel, at (202) 942-0527, or 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 5th Street NW, Washington, DC 20549-0102 (tel. 202-942-8090).

### Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust is currently comprised of thirty-nine series ("Portfolios"), each of which has its own investment objectives, and policies.<sup>1</sup> The shares of the Portfolios serve as funding vehicles for variable

annuity contracts and life insurance contracts offered through separate accounts of subsidiaries of The Manufacturers Life Insurance Company, a Canadian life insurance company ("Manulife").

2. The Adviser, a Delaware limited liability company, serves as investment adviser to each of the Portfolios, and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser is an indirectly-owned subsidiary of Manulife.

3. The Adviser serves as investment adviser to the Portfolios pursuant to an investment advisory agreement between the Adviser and the Trust that was approved by the board of trustees of the Trust (the "Board"), including a majority of the trustees ("Trustees") who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and the shareholders of the Trust ("Investment Advisory Agreement"). Under the Investment Advisory Agreement, the Adviser has overall general supervisory responsibility for the investment program of the Portfolios and recommends to the Board the selection of one or more subadvisers (each a "Manager" and collectively, "Managers") to provide one or more Portfolios with day-to-day portfolio management services ("Manager of Managers Strategy"). Each Manager is an investment adviser registered or exempt from registration under the Advisers Act, and performs services pursuant to a written agreement with the Adviser (the "Portfolio Management Agreement"). Managers' fees are paid by the Adviser out of its fees from the Portfolios at rates negotiated with the Managers by the Adviser. The Portfolios currently have 16 Managers.

4. The Trust has operated under a prior order ("Original Order") granting relief for the Manager of Managers Strategy since December 31, 1996.<sup>2</sup> The Adviser makes qualitative evaluations of each Manager's skills and demonstrated performance in managing assets under particular investment styles. The Adviser recommends to the Board for selection those Managers that have consistently distinguished themselves

<sup>1</sup> Applicants also request relief with respect to future series of the Trust and all future registered open-end management investment companies that are: (a) Advised by the Adviser or any entity controlling, controlled by, or under common control within the Adviser, and (b) which operate in substantially the same manner as the Trust and comply with the terms and conditions contained in the application. The Trust is the only existing investment company that currently intends to rely on the order.

<sup>2</sup> Investment Company Act Release Nos. 22382 (Dec. 9, 1996) (notice) and 22429 (Dec. 31, 1996) (order). The Original Order was granted to NASL Financial Services, Inc., NASL Series Trust and North American Funds. NASL Financial Services, Inc. has been merged into another wholly-owned subsidiary of Manulife. NASL Series Trust's name has been changed to Manufactures Investment Trust. The Adviser is no longer advising North American Funds; consequently it is not a party to this application. The Original Order also granted relief from certain disclosure requirements.

and demonstrated a high level of service and responsibility to investors. The Adviser reviews, monitors and reports to the Board regarding the performance and procedures of the Managers. The Adviser may recommend to the Board reallocation of assets of a Portfolio among Managers, if necessary, and the Adviser also may recommend hiring additional Managers or the termination of Managers in appropriate circumstances.

5. Applicants request relief to permit the Adviser to enter in and materially amend Portfolio Management Agreements without shareholder approval.<sup>3</sup> The order would supersede the Original Order. The requested relief will not extend to a Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Portfolios (an "Affiliated Manager"). Currently, one of the Managers is an Affiliated Manager.

#### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. 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 any provision of the Act, or from any rule thereunder, if 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. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f-2 under the Act to permit them to enter into and materially amend Portfolio Management Agreements without shareholder approval.

3. Applicants assert that under the Manager of Managers Strategy, the Portfolios' shareholders rely on the Adviser to select and monitor one or more Managers best suited to achieve a Portfolios' investment objectives. Applicants contend that, from the

perspective of the investor, the role of the Managers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Portfolio Management Agreements would impose expenses and unnecessary delays on the Portfolios, and may preclude the Adviser from promptly acting in a manner considered advisable by the Board. Applicants note that the Investment Advisory Agreement between the Trust and the Adviser will remain subject to section 15(a) of the Act and rule 18f-2 under the Act, including the requirements for shareholder approval.

#### Applicants' Conditions

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

1. No Portfolio will enter into a Portfolio Management Agreement with an Affiliated Manager without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the Portfolio (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions by the unitholders of the sub-account).

2. At all times, a majority of the Trustees will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

3. When a Manager change is proposed for a Portfolio with an Affiliated Manager, the Trustees, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Portfolio and its shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Portfolio and the unitholders of any sub-account) and that the change does not involve a conflict of interest from which the Adviser or the Affiliated Manager derives an inappropriate advantage.

4. Before a Portfolio may rely on the order, the operation of the Portfolio in the manner described in the application will be approved by a majority of the Portfolio's outstanding voting securities (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or in the case of a new Portfolio whose public

shareholders (or variable contract owners through a separate account) purchase shares on the basis of a prospectus(es) containing the disclosure contemplated by Condition 6 below, by the sole initial shareholder(s) before the shares of such Portfolio are offered to the public (or the variable contract owners through a separate account).

5. The Adviser will provide management services to the Trust and its Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio's securities portfolio, and, subject to review and approval by the Board will (a) set each Portfolio's overall investment strategies; (b) evaluate, select and recommend Managers to manage all or a part of a Portfolio's assets; (c) when appropriate, allocate and reallocate a Portfolio's assets among multiple Managers; (d) monitor and evaluate the investment performance of Managers; and (e) implement procedures reasonably designed to ensure that the Managers comply with the relevant Portfolio's investment objectives, policies, and restrictions.

6. Each Portfolio relying on the requested relief will disclose in its prospectus the existence, substance and effect of any order granted pursuant to this application. In addition, any such Portfolio will hold itself out as employing the Manager of Managers Strategy described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility to oversee the Managers and recommend their hiring, termination, and replacement.

7. No Trustee or officer of the Trust or officer or director of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, officer or director) any interest in a Manager except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of a publicly-traded company that is either a Manager or an entity controls, is controlled by, or is under common control with a Manager.

8. Within 90 days of the hiring of any new Manager, the Adviser will furnish shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, the Adviser will furnish the unit holders of the sub-account) with respect to the appropriate Portfolio all information about the new Manager that would be included in a proxy statement. Such

<sup>3</sup> The term "shareholder" includes variable life insurance policy and variable annuity contract owners that are unitholders of any separate account for which the Portfolios serve as a funding medium.

information will include any changes caused by the addition of a new Manager. To meet this condition, the Adviser will provide shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, then by providing unitholders of the sub-account) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

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. 34-42269; File No. S7-24-89]

### Joint Industry Plan; Solicitation of Comments and Order Approving Amendment No. 10 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago, Philadelphia and Cincinnati Stock Exchanges

December 23, 1999.

#### I. Introduction

On December 6, 1999, the National Association of Securities Dealers, Inc. ("NASD"), on behalf of itself and the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Philadelphia Stock Exchange, Inc. ("PHLX"), and the Cincinnati Stock Exchange ("Cincinnati") submitted to the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 10 to a joint transaction reporting plan ("Plan")<sup>1</sup> for Nasdaq/National

Market ("Nasdaq/NM") (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.<sup>2</sup> This notice and order approves the amendment, which would add Cincinnati as a Participant to the Plan and make technical changes to the Plan to reflect that the Midwest Stock Exchange now is called the Chicago Stock Exchange.

#### II. Background

The Commission originally approved the Plan on June 26, 1990.<sup>3</sup> The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.<sup>4</sup> The Commission originally approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Accordingly, the pilot period commenced on July 12, 1993.<sup>5</sup> The Plan has since been in operation on an extended pilot basis.<sup>6</sup>

same standards that previously applied to Commission review of UTP applications. The present order fulfills these Section 12(f) requirements.

<sup>2</sup> The signatories to the Plan, *i.e.*, the NASD, the CHX (previously, the Midwest Stock Exchange, Inc.), the PHLX, and the BSE, are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

<sup>3</sup> See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) ("1990 Approval Order").

<sup>4</sup> See Section 12(f)(2) of the Act. See also December 1998 Extension Order, *infra* note 6, for a more in depth description of the Plan.

<sup>5</sup> See letter from David T. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation, SEC, dated May 9, 1994.

<sup>6</sup> See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995); Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); Securities Exchange Act Release No. 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); Securities Exchange Act Release No. 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); Securities Exchange Act Release No. 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); Securities Exchange Act Release No. 38457 (March 31, 1997), 62 FR 16880 (April 8,

#### III. Description of the Plan

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in "eligible securities."<sup>7</sup> The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access; Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer; Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.<sup>8</sup>

#### IV. Discussion

The Commission finds that it is consistent with Section 11A<sup>9</sup> of the Act to add Cincinnati as a Participant to the Plan and to make technical changes to the Plan to reflect that the Midwest Stock Exchange is now called the Chicago Stock Exchange. Section 11A directs the Commission to facilitate the development of a national market system for securities, "having due regard for the public interest, the protection of investors, and the

1997); Securities Exchange Act Release No. 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); Securities Exchange Act Release No. 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); Securities Exchange Act Release No. 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); Securities Exchange Act Release No. 40869 (December 31, 1998), 64 FR 1834 (January 12, 1999) ("December 1998 Extension Order"); and Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) ("May 1999 Approval Order"); Securities Exchange Act Release No. 42268 (December 23, 1999).

<sup>7</sup> The Plan defines "eligible security" as any Nasdaq/NM security as to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Act or that is listed on a national securities exchange. On May 12, 1999, the Commission expanded the number of eligible Nasdaq/NM securities that may be traded by the CHX pursuant to the Plan from 500 to 1000. (See May 1999 Approval Order, *supra* note 6.

<sup>8</sup> The full text of the Plan, as well as a "Concept Paper" describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's public reference room.

<sup>9</sup> 15 U.S.C. 78k-1. In approving this amendment, the Commission has considered the amendment's impact on efficiency, competition, and capital formations. 15 U.S.C. 78(c)(f).

<sup>1</sup> Section 12(f) of the Securities Exchange Act of 1934 ("Act") describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.*, by extending unlisted trading privileges ("UTP") to the security. See 15 U.S.C. 781(f). Section 12(f) required exchanges to apply to the Commission before extending UTP to any security. In order to approve an exchange UTP application for a registered security not listed on any exchange ("OTC/UTP"), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. Section 12(f) was amended on October 22, 1994; the amendment removed the application requirement. OTC/UTP is now allowed only pursuant to a Commission order or rule, which is to be issued or promulgated under essentially the