by provisions for personnel training and evacuation.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.17, the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants Duke Power Company an exemption from the requirements of 10 CFR 70.24(a)(1), (2), and (3) for McGuire, Units 1 and 2, on the bases as stated in Section II above.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 5054).

This exemption is effective upon issuance and shall expire on December 31, 2005.

Dated at Rockville, Maryland, this 31st day of January.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–3066 Filed 2–6–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Performance Measurement Advisory Council

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meeting.

OPEN MEETING NOTICE: The Performance Measurement Advisory Council (''PMAC'') will meet on Monday, March 3, 2003, from 1 p.m. to 4 p.m. eastern time. Location for the meeting will be the Truman Room of the White House Conference Center, 726 Jackson Place, Washington, DC. The meeting is open to the public and written statements may be filed with the advisory committee. It is recommended that members of the public wishing to attend bring photo identification. Due to limited availability of seating, members of the public will be admitted on a first-come, first-served basis. This is the third and final meeting of the PMAC.

The purpose of the meeting is to provide independent expert advice and recommendations to the Office of Management and Budget regarding measures of program performance and the use of such measures in making management and budget decisions. The agenda and topics to be discussed include a review of program performance information in the budget, and review of the application of the Program Assessment Ratings Tool. An agenda may be obtained prior to the meeting at *http://www.whitehouse.gov/omb/budintegration/index.html.* Additional information, including information for members of the public with disabilities, may be obtained by calling Mr. Thomas M. Reilly, PMAC Designated Federal Officer, (202) 395–4926.

Dated: January 31, 2003.

Thomas M. Reilly,

PMAC Designated Federal Officer.

[FR Doc. 03–3105 Filed 2–6–03; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25923; 812–12736]

ARK Funds, et al.; Notice of Application

February 3, 2003.

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

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act; (c) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and, (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order that would permit certain registered open-end investment companies to participate in a joint lending and borrowing facility.

Applicants: Allied Investment Advisers, Inc. (''AIA''); Allfirst Trust Company N.A. (''Allfirst Trust''); ARK Funds.

Filing Dates: The application was filed on December 28, 2001, and amended on December 19, 2002. 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 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 February 28, 2003, 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, c/o Alan C. Porter, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Nadya B. Roytblat, Assistant Director, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. ARK Funds is registered under the Act as an open-end management investment company and is organized as a Massachusetts business trust.[1] AIA, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser for each series of ARK Funds. AIA is a wholly owned subsidiary of Allfirst Bank, a Federal Reserve member bank. Allfirst Trust, a wholly owned subsidiary of Allfirst Bank, serves as custodian, transfer agent and administrator for ARK Funds. An existing Commission order permits certain series of ARK Funds that are not money market funds to invest uninvested cash balances in one or more series of ARK Funds that are money market funds that comply with rule 2a–

[1] Applicants request that the relief also apply to any other existing or future registered open-end management investment company or series thereof that is advised by AIA or any person controlling, controlled by, or under common control with AIA or its successors (together with the series of ARK Funds, the ''Funds''). ''Successors'' are limited to any entities that result from AIA's reorganization into another jurisdiction or a change in the type of business organization. All Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

7 under the Act (''Money Market Funds'').[2]

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as trade ''fails'' in which cash payment for a portfolio security sold by a Fund has been delayed.

3. If the Funds were to borrow money from a bank, the Funds would pay interest on the borrowed cash at a rate that would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the profit the banks would earn for serving as a middleman between a borrower and a lender. In addition, while bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, the borrowing Funds would incur commitment fees and/or other charges involved in obtaining a bank loan.

4. Applicants request an order that would permit the Funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants state that the proposed credit facility would reduce potential borrowing Funds' costs and enhance lending Funds' ability to earn higher rates of interest on short-term loans. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the credit facility would provide borrowing Funds with significant savings when the cash position of the Funds is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which are normally effected promptly upon receipt, they often do not receive payment in settlement of the liquidation for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances beyond a Fund's control, such as delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. Under such circumstances, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility would enable the Funds to have access to immediate short-term liquidity without incurring custodian overdraft or other charges or lower investment returns.

7. While borrowing arrangements with banks may be available to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or purchasing shares of a Money Market Fund. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate'', both as defined below. The Repo Rate on any day would be the highest rate available to a lending Fund from investments in overnight repurchase agreements. The Bank Loan Rate on any day would be calculated by the Credit Facility Team, as defined below, each day an Interfund Loan is made according to a formula established by each Fund's board of trustees (each, a ''Board''), intended to approximate the lowest interest rate at which a bank short-term loan would be available to the Fund. The formula would be based on a publicly available rate (*e.g.*, Federal funds plus 25 basis points) that would vary so as to reflect changing bank loan rates. The Board of each Fund periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to it would be subject to the approval of the Board of each Fund.

9. The credit facility would be administered by an AIA investment professional (namely, a portfolio manager for the Money Market Funds), representatives of Allfirst Trust and of ARK Funds' accounting group (collectively, the ''Credit Facility Team''). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. On each business day Allfirst Trust, as the Funds' custodian, would provide the Credit Facility Team with data on the uninvested cash and borrowing requirements of all participating Funds. Applicants expect far more available uninvested cash each day than borrowing demand. Once the Credit Facility Team determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers (other than the portfolio manager on the Credit Facility Team). All allocations would require approval of at least one member of the Credit Facility Team other than the Money Market Fund portfolio manager. After allocating cash for Interfund Loans, the Credit Facility Team would invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds. The Money Market Funds would not participate as borrowers.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Teams believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the transaction.

11. The Credit Facility Team would (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to

[2] ARK Funds, *et al.* ICA Rel. Nos. 25136 (Aug. 24, 2001) (notice) and 25163 (Sept. 19, 2001) (order).

the Board of each Fund concerning any transactions by the Fund under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by the Board of each Fund, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), of the Fund, to ensure that both borrowing and lending Funds participate on an equitable basis.

12. AIA, through the Credit Facility Team, would administer the credit facility as a disinterested fiduciary in the best interests of the Funds' shareholders. Neither AIA nor Allfirst Trust would receive any additional fee in connection with the administration of the proposed credit facility. AIA and Allfirst Trust, however, may collect standard pricing and recordkeeping, bookkeeping, and accounting fees associated with repurchase and lending transactions generally, including transactions effected through the credit facility. Fees paid to AIA or Allfirst Trust in connection with an Interfund Loan would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or SAI; and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations, and organizational documents.

14. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from sections 12(d)(1)(A) and (B) of the Act; (c) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and, (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with that company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having AIA as their common investment adviser, and/or by reason of having common officers, directors and/or trustees.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an 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. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment companies involved, as recited in their registration statements, and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) AIA, through the Credit Facility Team, would administer the program as a disinterested fiduciary in the best interests of the Funds' shareholders; (b) all Interfund Loans would consist only of uninvested cash reserves that a Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a Money Market Fund; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) a lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) a borrowing Fund would pay interest at a rate lower than otherwise available to it under bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company, except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security for purposes of sections 17(a)(1) and 12(d)(1) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) of the Act are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that neither AIA nor Allfirst Trust would receive any additional compensation for services provided in connection with administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds.

6. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security, except that a company is permitted to borrow from any bank, if immediately after the borrowing there is an asset coverage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited

extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) of the Act is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, when acting as principal, from effecting any joint transaction unless the transaction is approved by the Commission. Rule 17d–1(b) under the Act provides that in passing upon applications for exemptive relief from section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from, or less advantageous than, that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by, and unfair advantage to, investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms no different from, or less advantageous than, that of other participating Funds.

Applicants' Conditions

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

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate and, if applicable, the yield of any Money Market Fund in which the lending Fund could otherwise invest and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend funds through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an

equitable basis among the Funds without the intervention of any portfolio manager of the Funds (other than the Money Market Fund portfolio manager acting in his or her capacity as a member of the Credit Facility Team). All allocations will require approval of at least one member of the Credit Facility Team who is not the Money Market Fund portfolio manager. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the portfolio manager of the Money Market Fund has access to loan demand data). The Credit Facility Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

13. The Credit Facility Team will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board of each Fund concerning the participation of the Fund in the credit facility and the terms and other conditions of any extensions of credit under the facility.

14. The Board of each Fund, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula, and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Credit Facility Team will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[3] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on overnight repurchase agreements and bank borrowings, the yield of any Money Market Fund in which the lending Fund could otherwise invest and such other information presented to the Board in connection with the review required by conditions 13 and 14.

17. The Credit Facility Team will prepare and submit to the Board of each Fund for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Credit Facility Team will report on the operations of the credit facility at the quarterly meetings of each Fund's Board.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the Credit Facility Team's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, and if applicable, the yield of the Money Market Funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and, (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third-party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, a Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3004 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

[3] If the dispute involves Funds with different Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47298; File No. 4–429]

Joint Industry Plan; Order Approving on a Temporary Basis Joint Amendment No. 4 to the Options Intermarket Linkage Plan Relating to Satisfaction Orders, Trade-Throughs and Other Nonsubstantive Changes, as Modified by an Amendment Thereto, and Notice of Filing of Such Amendment

January 31, 2003.

I. Introduction

On September 24, 2002, October 1, 2002, October 9, 2002, November 6, 2002, and November 26, 2002, the International Stock Exchange, Inc. (''ISE''), the Pacific Exchange, Inc. (''PCX''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the American Stock Exchange LLC (''Amex'') (collectively, the ''Participants''), respectively, filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] an amendment (''Joint Amendment No. 4'') to the Options Intermarket Linkage Plan (''Linkage Plan'').[3]

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex,