

**FOR FURTHER INFORMATION CONTACT:**

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Dated: August 1, 1996.

C.A. Bock,

*Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.*

[FR Doc. 96-20485 Filed 8-9-96; 8:45 am]

BILLING CODE 3610-76-M

## **SECURITIES AND EXCHANGE COMMISSION**

[Rel. No. IC-22116; 812-10232]

### **Driehaus International Large Cap Fund, L.P. et al.; Notice of Application**

August 5, 1996.

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

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

**APPLICANTS:** Driehaus International Large Cap Fund, L.P. (the "Partnership"), Driehaus Mutual Funds (the "Trust"), Driehaus Capital Management, Inc. (the "Adviser") and Richard H. Driehaus.

**RELEVANT ACT SECTION:** Order requested under section 17(b) of the Act for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit the Partnership to transfer substantially all of its assets and liabilities to the Trust in exchange for shares of beneficial interest of the Trust, which then would be distributed *pro rata* to the partners of the Partnership.

**FILING DATES:** The application was filed on July 2, 1996.

**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 August 30, 1996, 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 5th Street, N.W., Washington, DC 20549. Applicant, 25 East Erie Street, Chicago, IL 60611.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Krudys, Senior Counsel, at (202) 942-0641, or Alison E. Baur, Branch Chief, (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 SEC's Public Reference Branch.

#### **Applicant's Representation**

1. The Partnership was organized as a Delaware limited partnership on July 1, 1990. The Partnership's investment objective is to seek capital appreciation by investing in equity securities of foreign companies with a market capitalization of more than \$300 million using growth style investment criteria. The Partnership is organized as an investment partnership allowing investors to purchase limited partnership interests ("Interests") or have them redeemed at net asset value on a monthly basis. The offering of the Interests was structured as a private placement under section 4(2) of the Securities Act of 1933 and Regulation D promulgated thereunder. The Partnership is not registered under the Act in reliance on section 3(c)(1) of the Act. Interests are sold to institutional investors and high net worth individuals. The Partnership has a minimum initial purchase requirement of \$500,000.

2. Richard H. Driehaus serves as the sole general partner of the Partnership and has exclusive responsibility for its overall management, control and administration. The Adviser, which is wholly owned by Mr. Driehaus, serves as investment adviser with respect to Partnership assets. SEC records indicate that the adviser is registered under the Advisers Act.

3. The trust was organized as a Delaware business trust on June 3, 1996. The Trust is a registered no-load, open-end management investment company. The Trust currently has a single series, the Driehaus International Growth Fund (the "Fund") with an investment objective and policies similar to those of the Partnership. The Trust is managed by a board of trustees (the "Board"), which will include as a majority of its members persons who are not "interested persons" (as defined in the

Act) of the Trust (the "Independent Trustees").

4. The Fund proposes to acquire assets and liabilities from the Partnership in exchange for series of beneficial interests of the Trust relating to the Fund (the "Fund Shares") (the "Exchange"). The Exchange will be effected pursuant to an Agreement and Plan of Exchange (the "Plan"). Prior to effecting the Exchange, a memorandum will be distributed to each limited partner in the Partnership which will describe the nature and reasons for the Exchange.

5. The shares delivered to the Partnership in the Exchange will have an aggregate net asset value equivalent to the net asset value of the assets transferred by the Partnership to the Trust (except for the effect of certain organizational expenses paid by the Fund). Upon consummation of the Exchange, the shares received by the Partnership will be distributed by the Partnership to its partners, with each partner receiving shares having an aggregate net asset value equivalent to the net asset value of the Interests in the Partnership held by such partner prior to the Exchange. The Partnership may retain sufficient assets to pay any Partnership-accrued expenses that are not transferred to the Fund and retain any assets that the Fund is not permitted to purchase or that are reasonably determined to be unsuitable for it. Assets retained by the Partnership that are not needed to pay accrued expenses will be distributed *pro rata* to the partners of the Partnership. The Partnership will be liquidated and dissolved following the distribution.

6. The Partnership Agreement provides that the General Partners, upon 60 days advance notice to the Limited Partners, may terminate the Partnership. Limited Partners who do not wish to participate in the Exchange will have adequate opportunity to redeem their Partnership Interests before the Exchange and receive cash.

7. The expenses of the Exchange will be borne by the Adviser. Trust organizational expenses will be paid by the Fund and amortized over five years. Any unamortized organizational expenses associated with the organization of the Fund at a time Mr. Driehaus withdraws his initial investment in the Trust will be borne by Mr. Driehaus and/or the Adviser and not the Fund.

8. The Trust will enter into an advisory agreement with the Adviser (the "Advisory Agreement"), pursuant to which the Adviser will render advisory services to the Fund substantially the same as those the

Adviser currently renders to the Partnership. In return for the Adviser's services, the Fund will pay a management fee to the Adviser, on a monthly basis, not to exceed 1.5% per annum of the Fund's net asset value.

9. The management fees for the Fund will not exceed the maximum fees currently paid by the limited partners in the Partnership. Applicants expect that other Fund expenses will generally be higher as a percentage of net asset value than the expenses of the Partnership. This is primarily because of the increased costs of operating a registered investment company and complying with various additional regulatory requirements and industry practices. The Adviser will, however, place a limit on the annual expenses of the Fund through the end of the first year of operation at 2.25%. In addition, the Fund, unlike the Partnership, imposes a 1% withdrawal fee upon redemptions.

10. The effect of the Exchange will be to establish the Trust as a successor investment vehicle to the Partnership. The Exchange will permit partners to pursue, as shareholders of the Trust, substantially the same investment objective and policies they were expecting from the partnership without sacrificing the pass-through tax features of the Partnership. In addition, shareholders of the Trust will be able to purchase and redeem shares on each business day, as opposed to only once per month as is currently provided under the Partnership Agreement.

11. The Board of Trustees and Mr. Driehaus as General Partner of the Partnership have considered the desirability of the Exchange from the respective points of view of the Trust and the Partnership, have approved the Exchange, and concluded that: (i) The terms of the Exchange meet the criteria contained in section 17(b) of the Act; (ii) the Exchange is desirable as a business matter from the respective points of view of the Trust and the Partnership; (iii) the Exchange is in the best interests of the Trust and the Partnership; (iv) the Exchange is reasonable and fair, does not involve overreaching, and is consistent with the policies of the Act; (v) the Exchange is consistent with the policies of the Trust and the Partnership; and (vi) the interests of existing partners of the Partnership will not be diluted as a result of the Exchange. Currently, the Board has only one member, and this person is an "interested person" (as defined in the Act) of the Trust. As a condition of the Exchange, the Agreement and Plan of Exchange must be approved by the Board, including a majority of the independent trustees, at such time as it

has a majority of independent trustees. The Exchange will not be effected until the Trust and the Partnership have received a favorable opinion of counsel with respect to the tax consequences of the Exchange and the SEC has issued the requested order.

#### Applicants' Legal Analysis

1. Section 17(a) prohibits affiliated persons of a registered investment company, or affiliated persons of such persons, from selling to or purchasing from such company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" as, among other things, any person directly or indirectly controlling, controlled by, or under common control with, such other person. The partnership is an affiliated person of an affiliated person of the Trust because Mr. Driehaus is the owner of the adviser to the Trust, Mr. Driehaus is the general partner of the Partnership, and Mr. Driehaus will provide the initial "seed" capital investment in the Trust. As a result, the proposed Exchange may be deemed to be prohibited under section 17(a) of the Act.

2. Section 17(b) of the Act authorizes the Commission to exempt any person from one or more of the provisions of Section 17(a) if evidence establishes that (1) the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the Act.

3. The terms of the Exchange should be considered reasonable and fair to the Partnership, to the Trust, and to the limited partners who, with Mr. Driehaus, will be the initial shareholders of the Fund, and should not be considered to involve overreaching on the part of any applicant for the following reasons:

(a) The investment objective and policies of the Fund are substantially similar to that of the Partnership.

(b) No brokerage commission, fee or other enumeration will be paid in connection with the Exchange.

(c) The Exchange will result in no gain or loss being recognized by partners of the Partnership. The partners of the Partnership will become investors in an entity that offers greater liquidity and other advantages, without immediate tax consequences and without having incurred transaction and brokerage charges in order to do so.

(d) A majority of the members of the Board, including a majority of the independent trustees, and the general partner of the Partnership will have approved the Exchange.

4. Applicants believe that the terms of the proposed Exchange are consistent with the provisions, policies and purposes of the Act in that they are reasonable and fair to all parties, do not involve overreaching, and are consistent with the investment policies of each of the applicants. Accordingly, the applicants submit that the terms of the Exchange are consistent with the requirements of section 17(b) of the Act.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 96-20455 Filed 8-9-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37529; File No. SR-Amex-96-30]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to a One-Year Extension of the Exchange's Pilot Program for Specialists in Portfolio Depository Receipts and Investment Trust Securities to Participate in the After-Hours Trading Facility and to Extend the Pilot Program to Index Fund Shares**

August 6, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 31, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The text of the proposed rule change is available at the Amex and at the Commission.

<sup>1</sup> 15 U.S.C. 78s(b)(1).