SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23824; 812–11566]

Warburg Pincus Asset Management, Inc., et al.; Notice of Application

May 5, 1999.

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

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the implementation, without prior shareholder approval, of certain advisory and sub-advisory agreements in connection with the acquisition (''Acquisition'') of Warburg Pincus Asset Management Holdings, Inc. (''Warburg Holdings'') by Credit Suisse Group (''Credit Suisse''). The order would cover a period of up to 150 days following the later of: (i) The date on which the Acquisition is consummated (the ''Acquisition Date''), or (ii) the date on which the requested order is issued (but in no event later than December 31, 1999). The order also would permit the payment of all fees earned under the new advisory agreements during this period following shareholder approval.

APPLICANTS: Warburg Pincus Asset Management, Inc. (''Warburg''), Credit Suisse Asset Management (''CSAM–U.S.''), Abbott Capital Management, LLC (''Abbott'') and Blackrock Institutional Management Corporation (''Blackrock'') (collectively, the ''Advisers'').

FILING DATES: The application was filed on April 7, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

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 May 27, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Warburg, 466 Lexington Avenue, New York, NY 10017. CSAM–U.S., One Citicorp Center, 153 East 53rd Street, New York, NY 10022. Abbott, 50 Rowes Wharf, Suite 240, Boston, MA 02110–3328. Blackrock, 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526, or Nadya B. Roytblat, Assistant Director, 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 SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Warburg, a Delaware corporation, is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''). Abbott, a Delaware limited liability company, is an investment adviser registered under the Advisers Act. Blackrock, a Delaware corporation, is an investment adviser registered under the Advisers Act. Warburg is a wholly-owned subsidiary of Warburg Holdings.

2. Warburg serves as the adviser or sub-adviser to various management investment companies registered under the Act (''Funds'').[1] Abbott serves as sub-adviser to four of the Funds, Warburg, Pincus Global Post-Venture Capital Fund, Inc., Warburg, Pincus Post-Venture Capital Fund, Inc., and the Post-Venture Capital Portfolios of Warburg, Pincus Institutional Fund, Inc., and Warburg, Pincus Trust. Blackrock serves as a sub-adviser to four of the Funds, but is seeking relief only with respect to two Funds, Warburg, Pincus WorldPerks Money Market Fund, Inc. and Warburg, Pincus WorldPerks Tax Free Money Market Fund, Inc. The advisory and sub-advisory agreements currently in effect between the Advisers and the Funds are each referred to as an ''Existing Advisory Agreement'' and collectively, as the ''Existing Advisory Agreements.''

3. On February 15, 1999, Warburg Holdings entered into an acquisition agreement with Credit Suisse, under which Warburg Holdings will be acquired by Credit Suisse. Credit Suisse, a Switzerland corporation, is a global financial services company. Applicants expect the Acquisition to be consummated in June 1999. Upon consummation of the Acquisition, Credit Suisse intends to combine Warburg with CSAM–U.S. (the ''Reorganization''). Such combined businesses are expected to be conducted by CSAM–U.S. as a wholly-owned U.S. subsidiary of Credit Suisse (the ''New Adviser''). The Reorganization is expected to occur simultaneously with the Acquisition. CSAM–U.S. is registered as an investment adviser under the Advisers Act. New Adviser will succeed to CSAM–U.S.'s registration under the Advisers Act after the Reeorganization.

4. Applicants state that the Acquisition will result in an assignment and thus the automatic termination of the Existing Advisory Agreements. Applicants also state that the Reorganization may be deemed an assignment of each Fund's Existing Advisory Agreements if it does not occur simultaneously with the Acquisition. Applicants requests an exemption to permit the implementation, without prior shareholder approval, of new advisory and sub-advisory agreements with respect to the Funds (''New Advisory Agreements''). The requested exemption will cover the period of not more than 150 days beginning on the later of the Acquisition Date or the date of the issuance of the requested order and continuing with respect to each Fund through the date on which each New Advisory Agreement is approved or disapproved by the Fund's shareholders, but in no event later than December 31, 1999 (''Interim Period''). Applicants represent that the New Advisory Agreements will contain

[1] Warburg serves as the adviser to the following funds: Warburg, Pincus Balanced Fund, Inc., Warburg, Pincus Capital Appreciation Fund, Warburg, Pincus Cash Reserve Fund, Inc., Warburg, Pincus Emerging Growth Fund, Inc., Warburg, Pincus Emerging Markets Fund, Inc., Warburg, Pincus Fixed Income Fund, Warburg, Pincus Global Fixed Income Fund, Inc., Warburg, Pincus Global Post-Venture Capital Fund, Inc., Warburg, Pincus Growth & Income Fund, Inc., Warburg, Pincus Health Sciences Fund, Inc., Warburg, Pincus Institutional Fund, Inc., Warburg, Pincus Intermediate Maturity Government Fund, Inc., Warburg, Pincus International Equity Fund, Inc., Warburg, Pincus International Small Company Fund, Inc., Warburg, Pincus Japan Growth Fund, Inc., Warburg, Pincus Japan Small Company Fund, Inc. Warburg, Pincus Major Foreign Markets Fund, Inc., Warburg, Pincus New York Intermediate Municipal Bond Fund, Inc., Warburg, Pincus New York Tax Exempt Fund, Inc., Warburg, Pincus Post-Venture Capital Funds, Inc., Warburg, Pincus Small Company Growth Fund, Inc., Warburg, Pincus Small Company Value Fund, Inc., Warburg, Pincus Trust, Warburg, Pincus Trust II, Warburg, Pincus WorldPerks Money Market Fund, Inc., and Warburg, Pincus WorldPerks Tax Free Money Market Fund, Inc. Warburg serves as a sub-adviser to the Growth and Income Portfolio of the Variable Investors Series Trust, the International Growth Fund of WM Trust II, and the International Growth Fund of the WM Variable Trust.

substantially the same terms and conditions as the Existing Advisory Agreements, except in each case for the effective and the termination dates. Applicants further represent that each Fund will receive, during the Interim Period, the same scope and quality of investment advisory services, provided in the same manner by substantially the same personnel, at the same fee levels as it received prior to the Acquisition.

5. Applicants state that the board of directors of each Fund (the ''Board'') will meet prior to the Acquisition Date to consider approval of the New Advisory Agreements and submission of the New Advisory Agreements to the shareholders for their approval, in accordance with section 15(c) of the Act.[2] Applicants state that the Board will evaluate whether the terms of the New Advisory Agreements are in the best interests of the Funds and their shareholders.

6. Applicants submit that it will not be possible to obtain shareholder approval of the New Advisory Agreements in accordance with section 15(a) of the Act prior to the Acquisition Date. Applicants state that each Fund will promptly schedule a meeting of shareholders to vote on the approval of the New Advisory Agreements to be held during the Interim Period.

7. Applicants also request an exemption to permit the Advisers to receive from each Fund all fees earned under the New Advisory Agreements during the Interim Period, if and to the extent the New Advisory Agreements are approved by the shareholders of each Fund.[3] Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution (the ''Escrow Agent''). Advisory fees payable by the Funds to the Advisers under the New Advisory Agreements during the Interim Period will be paid into an interest-bearing escrow account maintained by the Escrow Agent. The amounts in the Escrow account (including interest earned on such paid fees) will be paid to the Advisers only after the New Advisory Agreements are approved by the shareholders of the relevant Fund in accordance with section 15(a) of the Act. If shareholder approval is not obtained and the Interim Period has ended, the Escrow Agent will return the escrow amounts to the appropriate Fund. Before the release of any such escrow amounts, the Boards will be notified.

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Section 15(a) of the Act further requires that such written contract provide for its automatic termination in the event of its ''assignment.'' Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of an investment advisory or investment sub-advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that the Acquisition will result in an assignment of the Existing Advisory Agreements and the Existing Advisory Agreements will terminate by their own terms. Applicants further state that if the Reorganization occurs after the Acquisition, the then-existing advisory agreements will be transferred to the New Adviser, which could be deemed to constitute an assignment of those agreements.

3. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by an assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser ''directly or indirectly receives money or other benefit'' in connection with the assignment. Applicants state that they cannot rely on rule 15a–4 because of the benefits to Warburg arising from the Acquisition.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and 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. Applicants believe that the requested relief meets this standard.

5. Applicants note that the terms and timing of the Acquisition were determined in response to a number of factors beyond the scope of the Act and substantially unrelated to the Funds. Applicants state that it may not be possible for the Funds to obtain shareholder approval of the New Advisory Agreements prior to the Acquisition Date. Applicants submit that the Boards will meet to approve the New Advisory Agreements prior to the Acquisition Date, in accordance with section 15(c) under the Act.

6. Applicants submit that the Advisers will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent to the scope and quality of services previously provided. During the Interim Period, the Advisers will operated under the New Advisory Agreements, which will be substantially the same as the respective Existing Advisory Agreements, except for the effective and the termination dates. Applicants state that the fees to be paid during the Interim Period will not be greater than the fees currently paid by the Funds. Applicants also assert that allowing the implementation of the New Advisory Agreements will ensure that there will be no disruption to the investment program and the delivery of related services to the Funds.

Applicant's Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Advisory Agreements will contain substantially the same terms and conditions as the Existing Advisory Agreements, except for the dates of execution and termination.

2. The portion of the advisory fees earned by the Advisers during the Interim Period will be maintained in an interest-bearing escrow account (including interest earned on such amounts), and amounts in the account will be paid: (a) To the applicable Adviser after the requisite approval of each New Advisory Agreement by the relevant Fund's shareholders is obtained; or (b) in the absence of such

[2] Applicants acknowledge that, to the extent that the Board of any Fund cannot meet to approve a New Advisory Agreement prior to the Acquisition Date, such Fund may not rely on the exemptive relief requested in this application.

[3] Applicants state that if the Acquisition Date precedes issuance of the requested order, the Advisers will continue to serve as Advisers after the Acquisition Date (and prior to the issuance of the order) in a manner consistent with their fiduciary duty to continue to provide advisory services to the Funds even though approval of the New Advisory Agreements has not yet been secured from the Funds' shareholders. Applicants also state that the Funds may be required to pay, with respect to the period until receipt of the order, no more than the actual out-of-pocket costs to the Advisers for providing advisory services.

approval by the end of the Interim Period, to the Fund.

3. Each Fund will promptly schedule a meeting of shareholders to vote on the approval of the New Advisory Agreements to be held during the Interim Period.

4. Warburg will pay the costs of preparing and filing the application, and Warburg and Credit Suisse will pay the costs relating to the solicitation and approval of the Funds' shareholders of the New Advisory Agreements.

5. The Advisers will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds by the Advisers during the Interim Period will be at least equivalent, in the judgment of the respective Boards, including a majority of the directors who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Disinterested Directors''), to the scope and quality of services currently provided under the Existing Advisory Agreements. In the event of any material change in the personnel providing services pursuant to the New Advisory Agreements, the Advisers will apprise and consult with the relevant Fund's Board to ensure that the Boards, including a majority of the Disinterested Directors, are satisfied that the services provided will not be diminished in scope or quality.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11691 Filed 5–7–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41357; File No. SR–CBOE–99–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Options on the Dow Jones High Yield Select 10 Index and RAES Order Size

April 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to increase the maximum size of orders on the Dow Jones High Yield Select 10 Index (''index''), from 20 to 100 contracts, eligible for entry into CBOE's Retail Automated Execution System (''RAES'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the propose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add an interpretation of Rule 6.8 to allow the appropriate Floor Procedure Committee (''FPC'') to increase the maximum size of option orders on the Dow Jones High Yield Select 10 Index (''Index''), from 20 to 100 contracts, eligible for execution through RAES. The Exchange expects this change to enhance the depth and liquidity of the market for options on the Index.

In adopting the new RAES rule applicable to options on the Index, the appropriate FPC will have the discretion to set the eligible order size for RAES orders up to one hundred (100) contracts. The Exchange believes that expanding the eligible contract limit size for RAES will provide the benefits of more timely and cost-effective executions of customer orders to a greater number of orders than would be the case if no change were made; enhance information gathering through the audit trail; enhance fill reporting and price reporting; increase customer confidence; and reduce transactions that have to be executed manually on the trading floor thereby increasing the efficiency in the handling of non-RAES orders.

CBOE believes that this proposed rule change will not impose any significant burdens on the operation, security, integrity, or capacity of RAES, but will increase the efficiency of Exchange operations.[3]

By expanding the maximum size of option orders on the Dow Jones High Yield Select 10 Index eligible for entry through RAES from 20 up to 100 contracts, the proposed rule will better serve the needs of the CBOE's public customers and Exchange members who make a market for such customers and is consistent with and furthers the objectives of Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change. or

(B) institute proceeding the determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The SEC has approved increasing interest rate option orders up to 100 contracts on RAES, Release No. 34–38002 (December 5, 1996), 61 FR 65422 (December 12, 1996).