

hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-0609. For Further Information Contact: Diane L. Titus at (202) 942-0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549-0506.

**Merrill Lynch Emerging Markets Debt Fund, Inc. [File No. 811-7794]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On February 24, 2003, applicant transferred its assets to Merrill Lynch World Income Fund, Inc., based on net asset value. Expenses of \$240,457 incurred in connection with the reorganization were paid by the acquiring fund.

*Filing Dates:* The application was filed on May 6, 2003, and amended on May 21, 2003.

*Applicant's Address:* 800 Scudders Mill Rd., Plainsboro, NJ 08536.

**Hyperion 2002 Term Trust, Inc. [File No. 811-7070]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 2, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$747,500 incurred in connection with the liquidation were paid by applicant. American Stock Transfer & Trust Company is holding assets for unlocated shareholders. Any unclaimed assets will eventually escheat to the various states.

*Filing Date:* The application was filed on May 8, 2003.

*Applicant's Address:* One Liberty Plaza, 165 Broadway, 36th Floor, New York, NY 10006-1404.

**Bergstrom Capital Corporation [File No. 811-1641]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 11, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately \$125,618 incurred in connection with the liquidation were paid by applicant. Applicant has retained cash in the amount of approximately \$383,805, which is being held in a deposit account at its custodian, to cover outstanding accrued liabilities. Applicants expect any assets remaining after payment of all outstanding obligations will be distributed to shareholders of record on June 6, 2003.

*Filing Dates:* The application was filed on April 8, 2003, and amended on May 7, 2003.

*Applicant's Address:* 221 First Ave. West, Suite 320, Seattle, WA 98119-4224.

**CTB Securities Trust Fund [File No. 811-10091]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering. Applicant will continue to operate as an unregistered real estate investment trust in reliance on sections 3(c)(1), 3(c)(5), and/or 3(c)(7) of the Act.

*Filing Dates:* The application was filed on March 14, 2003, and amended on May 8, 2003.

*Applicant's Address:* 22939 Hawthorne Boulevard, Torrance, CA 90505.

**Kenilworth Fund, Inc. [File No. 811-7620]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 30, 2002, applicant transferred its assets to AHA Diversified Equity Fund, based on net asset value. Expenses of \$30,253 incurred in connection with the reorganization were paid by applicant and Institutional Portfolio Services, Ltd., applicant's investment adviser.

*Filing Dates:* The application was filed on February 28, 2003, and amended on May 9, 2003.

*Applicant's Address:* 21 S. Clark St., Suite 2594, Chicago, IL 60603.

**Montgomery Partners Absolute Return Fund LLC [File No. 811-10595]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and has fewer than one hundred investors. Applicant will operate in reliance on section 3(c)(1) of the Act until its illiquid assets can be liquidated.

*Filing Dates:* The application was filed on March 28, 2003, and amended on April 29, 2003.

*Applicant's Address:* 101 California St., 34th Floor, San Francisco, CA 94111.

**Merrill Lynch KECALP L.P. 1986 [File No. 811-4387]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 22,

1999, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$64,091 incurred in connection with the liquidation were paid by applicant.

*Filing Dates:* The application was filed on December 22, 2000, and amended on May 2, 2003.

*Applicant's Address:* 4 World Financial Center, 23rd Floor, New York, New York 10080.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-14169 Filed 6-4-03; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-47950]**

**Order Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rule 11Aa3-2(f) Thereunder Extending a De Minimis Exemption for Transactions in Certain Exchange-Traded Funds From the Trade-Through Provisions of the Intermarket Trading System**

May 30, 2003.

Effective September 4, 2002, the Commission granted a nine-month *de minimis* exemption to the provisions of the Intermarket Trading System Plan ("ITS Plan"),<sup>1</sup> a national market system plan,<sup>2</sup> governing intermarket trade-

<sup>1</sup> The self-regulatory organizations ("SROs") participating in the ITS Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. (collectively, the "participants"). See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

<sup>2</sup> Securities Exchange Act of 1934 ("Act") Rule 11Aa3-2(d), 17 CFR 240.11Aa3-2(d), promulgated under Section 11A, 15 U.S.C. 78k-1, of the Act requires each self-regulatory organization ("SRO") to comply with, and enforce compliance by its members and their associated persons with, the terms of any effective national market system plan of which it is a sponsor or participant. Rule 11Aa3-2(f), 17 CFR 240.11Aa3-2(f), under the Act authorizes the Commission to exempt, either unconditionally or on specified terms and conditions, any SRO, member of an SRO, or specified security from the requirement of the rule if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

throughs.<sup>3</sup> This order extends this *de minimis* exemption.

The ITS Plan system is an order routing network designed to facilitate intermarket trading in exchange-listed securities among participating SROs based on current quotation information emanating from their markets. Quotations in exchange-listed securities are collected and disseminated by the Consolidated Quote System ("CQS"), which is governed by a national market system plan that the Commission has approved pursuant to Rule 11Aa3-2 under the Act.<sup>4</sup> Under the ITS Plan, a member of a participating SRO may access the best bid or offer displayed in CQS by another Participant by sending an order (a "commitment to trade") through ITS to that Participant. Exchange members participate in ITS through facilities provided by their respective exchanges. NASD members participate in ITS through a facility of the Nasdaq Stock Market ("Nasdaq") known as the Computer Assisted Execution System ("CAES"). Market makers and electronic communications networks ("ECNs") that are members of the NASD and seek to display their quotes in exchange-listed securities through Nasdaq must register with the NASD as ITS/CAES Market Makers.<sup>5</sup>

The Commission's August 2002 order granted a *de minimis* exemption from compliance with Section 8(d)(i) of the ITS Plan with respect to three specific exchange-traded funds ("ETFs"), the Nasdaq-100 Index ETF ("QQQ"), the Dow Jones Industrial Average ETF ("DIA"), and the Standard & Poor's 500 Index ETF ("SPY").<sup>6</sup> Section 8(d)(i) of the ITS Plan provides that participants should not purchase or sell any security that trades on the ITS Plan system at a price that is worse than the price at which that security is otherwise being offered on the ITS Plan system.<sup>7</sup> By its terms, the Commission's order exempts

from the trade-through provisions of the ITS Plan any transactions in the three ETFs that are effected at prices at or within three cents away from the best bid and offer quoted in the CQS for a period of nine months, which ends on June 4, 2003.

The three cent *de minimis* exemption allows ITS participants and their members to execute transactions, through automated execution or otherwise, without attempting to access the quotes of other participants when the expected price improvement would not be significant. In providing the three cent *de minimis* exemption, the Commission believed that, on balance, exempting the specified transactions from the ITS trade-through provisions would provide investors increased liquidity and expand the choice of execution venues, while limiting the possibility that investors would receive significantly inferior prices.

The Commission granted the three cent *de minimis* exemption on a temporary, nine-month basis, in order to gather the data necessary to study the effects of an exemption from the ITS trade-through provisions and the desirability of extending the exemption. The Commission is currently assessing trading data associated with the *de minimis* exemption, and over the next nine-months intends to consider whether to adopt the *de minimis* exemption on a permanent basis, to adopt some other alternative solution, or to allow the exemption to expire.

In view of the foregoing, the Commission believes that an extension of the *de minimis* exemption for an additional nine-month period is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system. The Commission emphasizes, as it did in its August 2002 order, that the *de minimis* exemption does not relieve brokers and dealers of their best execution obligations under the federal securities laws and SRO rules.

Accordingly, *it is ordered*, pursuant to Section 11A of the Act and Rule 11Aa3-2(f) thereunder,<sup>8</sup> that participants of the ITS Plan and their members are hereby exempt from Section 8(d) of the ITS Plan during the period covered by this Order with respect to transactions in QQQs, DIAs, and SPYs that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer

displayed in CQS. This Order extends the *de minimis* exemption from June 4, 2003 through March 4, 2004.

By the Commission.

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47948; File No. SR-CBOE-2003-19]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Reinstate the Imposition of a Marketing Fee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 13, 2003, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 CBOE proposes to reinstate a marketing fee, which it previously had suspended effective October 1, 2001, to be imposed on certain transactions of market-makers, including Designated Primary Market Makers ("DPMs"), for the purpose of attracting order flow to the CBOE. The fee will be imposed at a rate of \$.40 per contract on market-maker transactions, including those of DPMs, in all classes of options in which a DPM has been appointed. The marketing fee will be effective as of June 1, 2003. The text of the proposed rule change is available at the CBOE and at the Commission.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>3</sup> See generally Securities Exchange Act Release No. 46428, 67 FR 56607 (September 4, 2002).

<sup>4</sup> 17 CFR 240.11Aa3-2.

<sup>5</sup> See Securities Exchange Act Release No. 42536 (March 16, 2000), 65 FR 15401 (March 22, 2000). Market Makers and ECNs are required to provide their best-priced quotations and customer limit orders in certain exchange-listed and Nasdaq securities to an SRO for public display under Commission Rule 11Ac1-1 and Regulation ATS. 17 CFR 240.11Ac1-1 and 242.301(b)(3).

<sup>6</sup> The Commission limited the *de minimis* exemption to the three securities because they share certain characteristics that may make immediate execution of their shares highly desirable to certain investors. In particular, trading in the three ETFs is highly liquid and market participants may value an immediate execution at a displayed price more than the opportunity to obtain a slightly better price.

<sup>7</sup> Each ITS participant has adopted a trade-through rule substantially similar to the rule of the ITS Plan. See ITS Plan, Section 8(d)(ii); See, e.g., NYSE Rule 15A, NASD Rule 5262.

<sup>8</sup> 17 CFR 240.11Aa3-2(f).