11. During the operating phase, the General Partner will receive 1% of profits, credits, losses and net cash flow based on the Partnership's share of these items from the Operating Partnerships. The General Partner (or its affiliates) will also receive an annual Partnership management fee of 0.5%. Affiliates of the General Partner will receive a property management fee for the apartment complexes of up to 5% of the gross receipts from the complexes. In addition, the General Partner and its affiliates may be reimbursed for the actual costs of goods and materials used for or by the Partnership during the operational phase. During the liquidation phase, the General Partner will receive 5% of any liquidation, sale or refinancing proceeds after certain priority allocations and distributions.

12. All proceeds of the public offering of Units will initially be placed in an escrow account with the Wainwright Bank & Trust Company. The Partnership intends to apply such proceeds to the acquisition of Operating Partnership interests as soon as possible. Such proceeds may be temporarily invested in bank time deposits, certificates of deposit, bank money market accounts, and government securities. The Partnership will not trade or speculate in temporary investments. If subscriptions for at least 250,000 Units have not been received by one year from the date upon which the Partnership's registration statement is declared effective, no Units will be sold and funds paid by subscribers will be returned promptly, together with a pro rata share of any interest earned thereon.

Applicants' Legal Analysis

1. Section 6(c) authorizes the Commission to grant an exemption from the Act to the extent 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 6(e) permits the Commission to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company. Applicants seek an order under sections 6(c) and 6(e) exempting the Partnership from all provisions of the Act, except sections 37 through 53 and the rules and regulations under those sections, other than rule 38a–1.

2. Applicants assert that the requested relief is consistent with the protection of investors and the purposes and policies underlying the Act. Applicants assert, among other things, that investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form.

3. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the Release. The Release states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c).

4. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

5. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Operating Partnership by various Federal, state, and local agencies provide protection to investors in Units.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–10559 Filed 5–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26442; 812–13033]

RSI Retirement Trust and Retirement System Investors Inc.; Notice of Application

May 4, 2004.

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

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

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval.

APPLICANTS: RSI Retirement Trust (the ''Trust'') and Retirement System Investors Inc. (the ''Adviser'').

FILING DATES: The application was filed on October 28, 2003 and amended on April 20, 2004.

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 June 1, 2004, 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 Ryan M. Louvar, Esq., BISYS, 100 Summer Street, Suite 1500, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Shannon Conaty, Attorney-Adviser, at (202) 942–0527, or Annette M. Capretta, Branch Chief, 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. The Trust, a New York common law trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and has seven series (each series, a ''Fund'' and collectively, the ''Funds''), each with its own investment objectives, policies and restrictions. The Adviser, a Delaware corporation and wholly-owned subsidiary of Retirement System Group

Inc., a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').[1]

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between the Trust, on behalf of each Fund, and the Adviser (''Management Agreement'') that was approved by the Trust's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and each Fund's shareholder(s). The Management Agreement permits the Adviser to enter into separate investment advisory agreements (''Sub-Advisory Agreements'') with one or more sub-advisers (''Sub-Advisers''). Each Sub-Adviser has discretionary authority to invest that portion of the Fund's assets assigned to it by the Adviser. Each Sub-Adviser is or will be registered or exempt from registration under the Advisers Act. The Adviser monitors and evaluates the Sub-Advisers and recommends to the Board their hiring, termination, and replacement. The Adviser recommends Sub-Advisers based on a number of factors discussed in the application used to evaluate their skills in managing assets pursuant to particular investment objectives. The Adviser compensates the Sub-Advisers out of the fee paid to the Adviser by a Fund.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Sub-Adviser to one or more of the Funds (an ''Affiliated Sub-Adviser''). None of the current Sub-Advisers is an Affiliated Sub-Adviser.

[1] Applicants also request that any relief granted pursuant to the application apply to future series of the Trust and any other registered open-end management investment companies and their series that: (a) Are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (b) use the manager of managers structure described in the application; and (c) comply with the terms and conditions in the application (''Future Funds,'' and together with the Funds, the ''Funds''). The Trust is the only existing registered open-end management investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Sub-Adviser (as defined below), the name of the Adviser or the name of the entity controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Sub-Adviser.

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 a majority 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 the 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 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 for the reasons discussed below.

3. Applicants state that the Funds' shareholders rely on the Adviser to select the Sub-Advisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that the Management Agreements will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

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

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before shares of such Fund are offered to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance and effect of any order granted pursuant to this application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the ''manager of managers'' structure described in this application. Such Fund's prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. The Adviser will provide general management and administrative services to each of the Funds, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisers to manage all or part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Sub-Advisers; (iv) monitor and evaluate the performance of Sub-Advisers; and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the relevant Fund's investment objectives, policies and restrictions.

4. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

5. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

6. When a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or an Affiliated Sub-Adviser derives an inappropriate advantage.

7. No trustee or officer of the Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser 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 of a publicly-

traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

8. Within 90 days of the hiring of any new Sub-Adviser, the Adviser will furnish the shareholders of the applicable Fund all information about the new Sub-Adviser that would be included in a proxy statement. To meet this obligation, the Adviser will provide the shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act.

9. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–10562 Filed 5–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49648; File No. SR–NASD–2004–067]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend NASD Rule 7010 to Modify the Charges Paid by Members Receiving Nasdaq's Service for Trading Exchange-Listed Securities

May 3, 2004.

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 April 21, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Nasdaq under section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] 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

Nasdaq proposes certain changes to Rule 7010 to modify the service charges paid by members for the Nasdaq service for trading exchange-listed securities. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].[5]

* * * * *

7010. System Services

(a) through (c) No change.

(d) Computer Assisted Execution Service

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

(1) Service Charge[s]

[$100 per month for each market maker terminal receiving CAES.] *$200 per month per member receiving the service.*

(2) No change

(e) through (u) No change.

* * * * *

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

In its filing with the Commission, Nasdaq included statements concerning the purpose 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. Nasdaq 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to modify the monthly service charge paid by members receiving Nasdaq's Computer Assisted Execution System (''CAES'') service[6] for trading exchange-listed securities by replacing the monthly $100 per terminal charge with a flat monthly fee of $200 per member firm, regardless of the number of terminals used by such firm. Nasdaq believes that the proposed rule change will result in a more equitable allocation among members of the charges associated with this service. Nasdaq also believes that the overall decrease in fees for using this service should encourage greater use of Nasdaq in trading exchange-listed securities, and contribute to greater competition for executions of orders in New York Stock Exchange, Inc. and American Stock Exchange LLC-listed securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and Section 15A(b)(5) of the Act,[8] in particular, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. By adopting a pricing structure that is responsive to market demands, Nasdaq believes that the proposed amendment supports the efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4[10]

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The proposed rule change is marked to show changes from the rule text in the NASD Manual available at *http://www.nasd.com.*

[6] CAES is the computer order routing and execution facility for ITS securities. The CAES functionality is offered through the Nasdaq National Market Execution System (''NNMS'' or ''SuperMontage''). Telephone conversation between Alex Kogan, Office of General Counsel, Nasdaq, and Lisa N. Jones, Special Counsel, Division of Market Regulation (''Division''), Commission, on April 28, 2004.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*-3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii)

[10] 17 CFR 240.19b–4(f)(2).