

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Benson Eyecare Corporation, Common Stock, \$.01 Par Value); File No. 1-9435

December 27, 1994.

Benson Eyecare Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. ("NYSE"). The Security commenced trading on the NYSE at the opening of business on December 7, 1994 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before January 18, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 94-32306 Filed 12-30-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20797; 812-8422]

MID CAP SPDR Trust, Series 1, et al.; Notice of Application

December 23, 1994.

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

ACTION: Notice of Application for Order under the Investment Company Act of 1940 ("Act").

APPLICANTS: MID CAP SPDR Trust, Series 1 ("Trust") and PDR Services Corporation (together with any person directly or indirectly controlling, controlled by, or under common control with, PDR Services, the "Sponsor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) granting an exemption from sections 4(2), 14(a), 17(a) (1), 17(a) (2), 22(d), 22(e), 24(d), 26(a) (C) and rule 22c-1; under section 17(b) granting an exemption from sections 17(a)(1) and 17(a)(2); and under rule 17d-1 to permit certain joint transactions with affiliates.

SUMMARY OF APPLICATION: Applicants request an order permitting:

(1) the Trust to issue non-redeemable securities ("MID CAP SPDRs");

(2) secondary market transactions in MID CAP SPDRs at negotiated prices, rather than at a current public offering price described in the prospectus;

(3) dealers to sell MID CAP SPDRs to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933;

(4) certain expenses associated with the creation and maintenance of the Trust to be borne by the Trust, rather than by the Sponsor;

(5) affiliated persons of the Trust to deposit securities into, and receive securities from, the Trust in connection with the purchase and redemption of MID CAP SPDRs; and

(6) the Trust to reimburse the Sponsor for payment of an annual licensing fee to Standard & Poor's. The order would also temporarily permit the Trust to satisfy redemption requests within five business days rather than seven calendar days and exempt the Sponsor from the Act's requirement that it purchase, or place with others, \$100,000 worth of MID CAP SPDRs;

FILING DATE: The application was filed on May 28, 1993; and amended on July 13, 1994. By letter dated December 23, 1994, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

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 January 17, 1995, and should be accompanied by proof of service on the 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, c/o American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 942-0571, or Robert A. Robertson, 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 SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a unit investment trust ("UIT") that will be organized under the laws of the State of New York. The Trust is designed to provide investors with a low-cost instrument that closely tracks the Standard & Poor's MidCap 400 Index ("S&P MidCap 400 Index"), that trades like a share of common stock, and that pays quarterly dividends proportionate to those paid by the portfolio of stocks that constitutes the S&P MidCap 400 Index.¹ The Sponsor is a wholly-owned subsidiary of the American Stock Exchange ("AMEX"). The Bank of New York ("Trustee") will act as trustee of the Trust. PDR Distributors, Inc. ("Distributor"), a registered broker-dealer and wholly-owned subsidiary of Signature Financial Group, Inc., will serve as the distributor

¹ The S&P MidCap 400 Index is an index that focuses on middle capitalization stocks not included in the Standard and Poor's 500 Composite Stock Price Index ("S&P 500 Index"). The issues included in the S&P MidCap 400 Index were selected from a population of 1,700 securities, each with a 1990 year-end capitalization of between \$200 million and \$5 billion. As of December 31, 1993, applicants estimate that over \$6 billion was invested in or indexed to the S&P MidCap 400 Index.

of the Trust's securities, known as MID CAP SPDRs (for Standard & Poor's MidCap 400 Portfolio Depository Receipts).

2. Units of beneficial interest in the Trust will be issued in aggregates of 25,000 MID CAP SPDRs known as "Creation Units." Each MID CAP SPDR will be worth one-fifth the value of the S&P MidCap Index, or approximately \$34 at the time of filing the application. Each Creation Unit, therefore, would cost about \$850,000.

3. All orders to purchase Creation Units from the Trust must be placed with the Distributor, who shall be responsible for transmitting such orders to the Trustee. The Distributor will furnish to purchasers confirmation that the orders have been accepted, but shall reject any order that is not in proper form. Upon acceptance of an order, the Distributor will instruct the Trustee to initiate the appropriate procedures. The Distributor will maintain records of the orders placed with it, the confirmations of acceptances it issues, and the instructions to implement delivery. The Distributor will be responsible for distributing prospectuses and may provide certain other administrative services, such as those related to state securities compliance. The Sponsor will pay the Distributor a fee for its services. The Sponsor will not seek reimbursement from the Trust for the payment of such fee without obtaining exemptive relief from the SEC.

4. Investors wishing to purchase a Creation Unit must transfer to the Trust a "Portfolio Deposit," which consists of: (a) a portfolio of securities that is substantially similar, in composition, to the component securities ("Index Securities") of the S&P MidCap 400 Index; (b) a cash payment equal to the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, net of expenses and liabilities, on a Creation Unit basis; and (c) a cash payment or credit ("Balancing Amount") designed to equalize the net asset value of the S&P MidCap 400 Index and the net asset value of a Portfolio Deposit. The Balancing Amount is required because, among other things, a Portfolio Deposit, unlike the S&P MidCap 400 Index, cannot contain fractional shares. An investor making a Portfolio Deposit also will be charged a nominal service fee ("Transaction Fee") to defray securities settlement costs, as discussed below.

5. MID CAP SPDRs will not be individually redeemable, except upon termination of the Trust. To redeem, an investor must accumulate enough MID CAP SPDRs to reconstitute a Creation Unit. An investor redeeming a Creation

Unit will receive Index Securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that date.

6. Because a redeeming shareholder will receive a Portfolio Deposit in exchange for its Creation Unit, and only a minute portion of a Portfolio Deposit consists of cash, the Trustee will not be forced to maintain large cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P MidCap 400 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a much greater portion of their assets for cash redemptions.

7. Persons obtaining MID CAP SPDRs from the Trust in Creation Unit size aggregations may hold those MID CAP SPDRs or sell some or all of them into the secondary market. MID CAP SPDRs will be listed on the AMEX and traded in the secondary market in the same manner as other equity securities. The price of MID CAP SPDRs on the AMEX will be based on a current bid/offer market. Transactions involving the sale of MID CAP SPDRs will be subject to customary brokerage commissions and charges.

8. Applicants expect that the price at which MID CAP SPDRs trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Unit-size aggregations at net asset value, which should ensure that MID CAP SPDRs will not trade at a material discount or premium in relation to net asset value.

9. To be eligible to purchase a Creation Unit, an organization must be a participant in the continuous net settlement system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant, but is not required to be an AMEX member. The procedures employed to process a purchase order will depend upon whether the transaction is settled through NSCC or DTC. Procedures for redeeming a Creation Unit are analogous to those for purchasing one, although redemption requests are placed with the Trustee, rather than the Distributor.

10. MID CAP SPDRs will be registered in book-entry form only; certificates will not be issued. The DTC or its nominee will be the registered owner of all outstanding MID CAP SPDRs. Records reflecting the beneficial owners of MID CAP SPDRs will be maintained by the DTC or the DTC participants.

11. Persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending on the circumstances, result

in their being deemed statutory underwriters. For example, a broker-dealer firm may be deemed a statutory underwriter if it purchases Creation Units from the Trust, breaks them down into the constituent MID CAP SPDRs, and sells the MID CAP SPDRs directly to its customers; or if it chooses to couple the creation of a supply of new MID CAP SPDRs with an active selling effort involving solicitation of a secondary market demand for MID CAP SPDRs. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus will explain that (a) a statutory underwriter will be subject to certain liability provisions of the Securities Act, and (b) dealers who are statutory underwriters, and dealers effecting transactions in MID CAP SPDRs that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, will be unable to take advantage of the prospectus delivery exemption provided to dealers by section 4(3) of the Securities Act.

12. As provided in the rules of the AMEX, applicants will make available a "Product Description" of MID CAP SPDRs to members and member organizations for distributions by them to customers purchasing MID CAP SPDRs. In addition, members are required to include the Product Description with sales materials relating to MID CAP SPDRs that is provided to the public. The Product Description is designed to provide a brief and readily understandable description of the salient aspects of MID CAP SPDRs. The Product Description will advise investors that a prospectus is available without charge upon request. Although the AMEX rule cannot ensure delivery of a Product Description to investors purchasing MID CAP SPDRs through a non-member broker-dealer in a transaction away from the AMEX floor, applicants expect that such transactions should be extremely rare. In addition, applicants note that transactions effected on regional exchanges pursuant to unlisted trading privileges can be covered by conditioning the grant of such privileges upon imposition of an exchange requirement that Product Descriptions be delivered. Purchases effected over the counter may be somewhat more difficult to address, although applicants note that the National Association of Securities Dealers, Inc. may wish to promulgate an advice to members regarding the need to distribute a Product Description to every

MID CAP SPDR purchaser on the same terms as required by the AMEX rule.

13. During the first two years of operation, the Trustee will be paid a "Trustee's Fee" of 12/100 of 1% of the Trust's net asset value annually. Thereafter, the Trustee's Fee will vary from 10/100 to 14/100 of 1% per annum, depending on the net asset value of the Trust. The Trustee may waive all or a portion of the Trustee's fee. The Trustee also will receive a Transaction Fee directly from investors in connection with certain creations and redemptions of Creation Units to defray securities settlement costs. The Transaction Fee will vary from \$250 to \$1500 per Creation Unit depending upon the number of Creation Units the investor creates or redeems. An additional amount not to exceed three times the Transaction Fee will be charged to investors who purchase and redeem via the DTC rather than the continuous net settlement system of NSCC, to cover the increased expense associated with settlement outside the NSCC clearing process. The Sponsor may modify or waive the Transaction Fee for certain lot-size creations or redemptions. Any increase of the Transaction Fee will be subject to a maximum of 20/100 of 1% of the value of a Creation Unit at the time of creation or redemption, as the case may be. All variations in the Transaction Fee will be imposed in compliance with rule 22d-1, as if it were a sales load. The Trustee also will receive as compensation any benefit derived from holding funds of the Trust in non-interest bearing accounts.

14. The Trust will make quarterly distributions of an amount representing the dividends accumulated on portfolio securities during such quarter, net of fees and expenses. Additional distributions will be made to the minimum extent necessary to comply with certain provisions of the Internal Revenue Code and to avoid the imposition of excise taxes imposed by section 4982 of the Code. The Trust also intends to make available the DTC book entry Dividend Reinvestment Service through which investors may have their dividend distributions reinvested in MID CAP SPDRs. The Trust's prospectus will disclose that brokerage commissions, if any, incurred in obtaining the Index Securities necessary to create additional MID CAP SPDRs with the cash from these distributions will be an expense of the Trust.

15. Beneficial owners of MID CAP SPDRs will have no voting rights with respect to the securities held by the Trust. The Trustee will have the right to vote all of the voting stocks in the Trust.

The Trustee will vote the Trust's shares in the same proportion as all other shares of the security are voted. If this arrangement is not permitted, the Trustee shall abstain from voting.

16. Applicants assert that MID CAP SPDRs afford significant benefits in the public interest. MID CAP SPDRs, which track non-S&P 500 securities, will broaden the trading, investing, and hedging opportunities available to investors by tracking an alternative segment of the domestic equity securities market, stocks with mid-range capitalizations. Applicants believe that MID CAP SPDRs enhance the choices available to investors and provide a cost-effective mechanism for investing in the targeted market segment. Further, the Trust should be able to track the S&P MidCap 400 Index more closely than other basket products that must allocate a portion of their assets for cash redemptions. In addition, MID CAP SPDRs will provide a low-cost market-basket security that, unlike open-end index funds, can be traded at negotiated prices throughout the business day.

Applicants' Legal Analysis

1. Applicants request an order granting an exemption from sections 4(2), 14(a), 17(a)(1), 17(a)(2), 22(d), 22(e), 24(d), and 26(a)(2)(C) and rule 22c-1 and permitting them to engage in affiliated transactions otherwise prohibited by section 17(d) and rule 17d-1. Applicants represent that the relief requested herein is substantially similar to that granted in the application concerning the Standard and Poor's Depository Receipts ("SPDRs"), a similar instrument that tracks the S&P 500 Index.²

2. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. Because MID CAP SPDRs are not individually redeemable, applicants request an order that would permit the Trust to register and operate as a UIT. Applicants note that beneficial owners of MID CAP SPDRs wishing to redeem may purchase additional MID CAP SPDRs and tender the resulting Creation Unit for redemption. Moreover, because the market price of MID CAP SPDRs will be disciplined by arbitrage opportunities, beneficial owners should be able to sell MID CAP SPDRs at approximately net asset value.

3. Section 22(d), among other things, prohibits a dealer from selling a redeemable security that is being

currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its net asset value. Secondary market transactions in MID CAP SPDRs will take place at negotiated prices (generally the current bid/offer price quoted on the AMEX), not at a current offering price described in the prospectus, and not at a price based on net asset value. Thus, purchases and sales of MID CAP SPDRs by dealers in the secondary market will not comply with section 22(d) and rule 22c-1. Accordingly, applicants have requested an exemption from these two provisions.

4. The concerns sought to be addressed by section 22(d) and rule 22c-1 with respect to pricing are equally satisfied by the proposed method of pricing MID CAP SPDRs. While there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been enacted (a) to prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) to assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. Applicants believe that none of these purposes will be thwarted by permitting MID CAP SPDRs to trade in the secondary market at negotiated prices. First, secondary market trading in MID CAP SPDRs, because it does not involve the Trust as a party, cannot result in dilution of a beneficial owner's investment. Second, to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand and interest rates, not as a result of unjust or discriminatory manipulation. Therefore, secondary market trading in MID CAP SPDRs will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of MID CAP SPDRs and their net asset value remains narrow.

5. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer

² See *SPDR Trust, Series 1*, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (October 26, 1992) (order) ("SPDR Order").

transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by a UIT. If MID CAP SPDRs are viewed as redeemable because Creation Units are redeemable and MID CAP SPDRs are deemed to be securities of the same class, section 24 would apply. Because the applicability of section 24(d) is not free from doubt, applicants have requested an exemption from that section to permit dealers trading in MID CAP SPDRs to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act. Assuming section 24(d) applies, the exemption is necessary because, according to applicants, the imposition of prospectus delivery requirements on transactions by dealers in the secondary market will materially and adversely impede the success of the MID CAP SPDRs product.

6. Applicants note that the secondary market for MID CAP SPDRs is significantly different from the typical secondary market for UIT securities, which usually is maintained by the sponsor. MID CAP SPDRs will be listed on a national securities exchange and will be traded in a manner similar to the shares of common stock issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end funds in the secondary market generally are not required to deliver a prospectus to the purchaser. Applicants contend that the MID CAP SPDRs should be subject to the same regulatory scheme as securities issued by operating companies and closed-end funds.

7. Because MID CAP SPDRs will be exchange-listed, prospective investors will have access to several types of information about the product. Information regarding sales price and volume will be continually available on a real time basis throughout the day on brokers' computer screens and other electronic services, such as Quotron. The previous day's price and volume information will be published daily in the financial section of newspapers. Applicants also will publish daily, on a per MID CAP SPDR basis, the amount of accumulated dividends, net of accrued expenses. In addition, applicants expect that MID CAP SPDRs, like SPDRs, will be viewed as a novel, cost-effective, index security and will generate significant interest in the financial community. Applicants expect that broker-dealers and market analysts will familiarize themselves with the product, follow its performance, and share their opinions of the product with clients and other investors, resulting in even greater

amounts of available information for investors.

8. In addition to all the information set forth above, investors will receive the Product Description. While not intended to substitute for a full prospectus, the Product Description will contain useful information about MID CAP SPDRs.

9. Section 26(a)(2)(C) requires, among other things, that the trust indenture prohibit payments to the trust's depositor (*i.e.*, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services not relevant hereto. Applicants request an exemption from section 26(a)(2)(C) to permit the Trust to reimburse the Sponsor or AMEX, up to a maximum of 30 basis points of the Trust's net asset value on an annualized basis, for the following expenses: (a) annual licensing fees for use of the "S&P MidCap 400" trademark; (b) federal and state annual registration fees for the issuance of MID CAP SPDRs; (c) expenses of the Sponsor relating to the printing and distribution of marketing materials describing MID CAP SPDRs and the Trust; and (d) the initial fees and expenses incurred in connection with the organization of the Trust, which will be capitalized and amortized over five years on a straight-line basis.

10. Ordinarily, the sponsor of a UIT has several sources of income, and expenses normally incurred by the sponsor in connection with the creation and maintenance of a UIT can be offset against the income from such sources. As the proposed Trust is structured, however, the usual sources of income are not available because the Sponsor will not impose a sales load, maintain a secondary market, or deposit Index Securities into the Trust. Although the Sponsor's parent company, the AMEX, will earn some income on the trading fees imposed on transactions occurring on the exchange, applicants expect that such fees will generate substantially less revenue than what would have been generated by a normal sales load or sales charges on secondary market trades of MID CAP SPDRs. In light of the above, applicants contend that the abuse sought to be remedied by section 26(a)(2)(C)—"double dipping" by UIT sponsors collecting money from their captive trusts on top of the profits already generated by sales charges and other sources of income—will not be present if the requested exemption is granted. In any event, the payment is capped at 30 basis points of the Trust's net asset value on an annualized basis. Expenses in excess of that figure will be absorbed by the Sponsor or the AMEX.

11. Section 14(a) provides, in part, that no registered investment company may make an initial public offering of its securities unless it has a net worth of \$100,000, or provision is made in connection with the registration of such securities that (i) firm agreements to purchase \$100,000 worth of such securities will have been made by not more than 25 persons, and (ii) all proceeds, including sales loads, will be refunded to investors if the investment company has a net worth of less than \$100,000 within 90 days after the effective date of the registration statement.

12. Rule 14a-3 under the Act provides an exemption from section 14(a) for UITs that invest only in "eligible trust securities" and agree to certain investor safeguards, including the refund of any sales loads collected from investors. Applicants will comply in all respects with rule 14a-3, except that the Trust will not restrict its investments to eligible trust securities, which do not include equity securities, and the Trustee will not refund the Transaction Fee discussed above. The fact that the Trust's portfolio is invested in equity rather than debt securities, applicants contend, does not negate the effectiveness of the safeguards nor subject investors to greater risk of loss due to investment in an undercapitalized investment company. With respect to the Transaction Fee, applicants believe that it is not a sales load, and therefore is not covered by the refund provision. In addition, the Transaction Fee will be paid not by small retail investors, but by institutional and other sophisticated, well-capitalized investors who can afford the \$850,000 purchase price of a Creation Unit. Such investors are able to assume the risk, which will be disclosed in the prospectus, of forfeiting the relatively small additional amount represented by the Transaction Fee.

13. Section 17(a) generally prohibits an affiliated person of a registered investment company from purchasing from or selling to such company any security or other property. Because purchases and redemptions will be "in-kind" rather than cash transactions, section 17(a) may prohibit affiliated persons of the Trust from purchasing or redeeming Creation Units. Moreover, because the definition of affiliated person includes anyone owning 5% or more of an issuer's outstanding voting stock, every purchaser of a Creation Unit will be affiliated with the Trust so long as there are twenty or fewer holders of Creation Units. Applicants request an exemption from section 17(a) pursuant to sections 6(c) and 17(b), to

permit affiliated persons of the Trust to purchase and redeem Creation Units.

14. Applicants contend that no useful purpose would be served by prohibiting affiliated persons from making "in kind" purchases or "in kind" redemptions of Creation Units. The composition of the Portfolio Deposit deposited by a purchaser or given to a redeemer will be the same regardless of the investor's identity, and will be valued pursuant to the same objective standards applied to valuing the Trust's portfolio securities. Thus, "in kind" purchases and redemptions will afford no opportunity for affiliated persons to effect a transaction detrimental to the other holders of MID CAP SPDRs. Applicants believe that "in kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Trust.

15. Applicants request an order pursuant to rule 17d-1 that would permit the Trust to reimburse the Sponsor or the AMEX for the payment by either such party to Standard & Poor's of the annual fee required under a license agreement. The license agreement allows applicants to use the S&P MidCap 400 Index as a basis for MID CAP SPDRs and to use certain of Standard & Poor's trademark rights. Applicants believe that relief is necessary because the Trust's undertaking to reimburse the Sponsor (an affiliated person of the Trust) and/or the AMEX (an affiliated person of the Sponsor) may constitute a joint enterprise or joint arrangement in which the Trust is a participant, in contravention of section 17(d) and rule 17d-1.

16. Applicants request a temporary exemption from the requirement imposed by section 22(e) of the Act to provide payment or satisfaction of redemptions within seven days following tender of a Creation Unit for redemption. Applicant represents that the Trust's clearing agent, NSCC, currently clears all trades through its system in five business days and short settlement of trades will not be available in connection with the MID CAP SPDR clearing process. NSCC is closed for business on certain holidays. Under the present system, if a Beneficial Owner were to tender a Creation Unit for redemption during a seven day period preceding such a holiday, NSCC's five business day settlement system would result in a redemption on the eighth calendar day following tender, resulting in a technical violation of section 22(e). Applicants request relief to permit redemption in five business days following a redemption request until the

effective date of rule 15c6-1 adopted under the Securities Exchange Act, which will shorten the settlement period to three business days. The rule provides for a transition period during which securities may settle in four business days. After the effective date of the rule, the NSCC will settle in accordance with the rule and relief from 22(e) will no longer be necessary.

17. Applicants assert that the NSCC is the appropriate institution to provide securities clearing services for the Trust. It is the nation's largest clearing agency, clearing 95% of all domestic equity trades, and has a well-established reputation in the financial community. In addition, the clearance and settlement of four hundred separate securities essentially as a single transaction requires sophisticated clearing services. Applicants have found that NSCC is able to provide these services and has enhanced its existing clearing processes to handle purchases and redemptions of Creation Units. The use of NSCC will provide beneficial owners of MID CAP SPDRs with state-of-the-art securities handling, clearance, and transfer systems services, which, given the complexity of mirroring the component shares of the S&P MidCap 400 Index, is extremely important to all such owners. Applicants also note that the Sponsor has found the clearing process efficient and reliable when clearing SPDRs for the SPDR Trust.

Applicants' Conditions

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

1. Applicants will not register a new series of the Trust, whether identical or similar to Series 1, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless Applicants have requested and received with respect to such new series, either exemptive relief from the SEC or a no-action position from the Division of Investment Management of the Commission.

2. The Trust's prospectus and the Product Description will clearly disclose that, for purposes of the Act, MID CAP SPDRs are issued by the Trust and that the acquisition of MID CAP SPDRs by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

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Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Pratt & Lambert United, Inc., Common Stock, \$.01 Par Value) File No. 1-994

December 27, 1994.

Pratt & Lambert United, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security from listing and registration include the following:

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In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before January 18, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

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