proposed rule change and Amendment No. 1 was published for comment and appeared in the **Federal Register** on June 14, 1995.[4] No comment letters were received on the proposal. This order approves the PSE proposal.

I. Description of the Proposal

The Exchange is proposing to amend Options Floor Procedure Advice (''OFPA'') B–13 to provide that trading crowds will be evaluated by questionnaire semi-annually rather than quarterly. OFPA B–13 requires the Options Allocation Committee (''Committee'') of the Exchange to evaluate periodically the options trading crowds[5] to determine whether each has fulfilled performance standards relating to, among other things, quality of markets, competition among market makers, observance of ethical standards, and administrative factors.[6] In conducting its evaluation, the Committee may consider any relevant information, including but not limited to, the results of a trading crowd evaluation questionnaire. Currently, the questionnaires are distributed to and completed by floor brokers on the Options Trading Floor on a ''three-month periodic basis'' pursuant to OFPA B–13. The Exchange is proposing to amend OFPA B–13 to require floor brokers to complete the questionnaires on a ''six-month periodic basis.''

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[7] in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and to remove impediments to and protect the mechanism of a free and open market and to protect investors and the public interest. Specifically, the Commission believes that, based on the Exchange's representations that quarterly evaluations are overly repetitive, reducing the frequency with which the evaluations are conducted should encourage floor brokers to exercise greater care in preparing their responses, thus resulting in a more precise measurement of trading crowd and Lead Market Maker performance. A more precise measurement of trading crowd and Lead Market Maker performance serves to enhance the Options Trading Crowd Evaluation Program, which is designed to help the Exchange maintain the quality and integrity of its markets by setting minimum standards of market maker performance and providing a means to identify market makers and trading crowds which fail to meet performance standards.[8]

Moreover, the Commission believes that the purposes for distributing the questionnaire, *i.e.*, enabling the PSE to determine whether market makers are making continuous, two-sided markets in all option series for each option class located at a trading station and whether deep and liquid markets are provided as a result of competition among market makers,[9] will not be compromised by distributing the questionnaires semi-annually instead of quarterly. Additionally, the Commission notes that the proposed change should result in a more efficient allocation of Exchange resources. Further, the Commission notes that the Chicago Board Options Exchange (''CBOE'') evaluates its trading crowds and market makers on a semi-annual basis, pursuant to CBOE Rule 8.60(c). Finally, with respect to Amendment No. 1, the Commission believes that it is appropriate for the Exchange to review LMMs semi-annually so as to treat the formal review of trading crowds and LMMs consistently.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PSE–95–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20404 Filed 8–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21278; International Series Release No. 838; 812–9666]

Deutsche Bank AG; Notice of Application

August 11, 1995.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Deutsche Bank AG (''Deutsche Bank'').

RELEVANT ACT SECTIONS: Order under section 6(c) of the Act for an exemption from section 17(f) of the Act.

SUMMARY OF APPLICATION: Deutsche Bank requests an order that would permit United States registered investment companies (a ''U.S. Investment Company''), other than investment companies registered under section 7(d), for which Deutsche Bank serves as custodian or subcustodian, to maintain foreign securities and other assets in Malaysia with Deutsche Bank (Malaysia) Berhad (''DBM''), a subsidiary of Deutsche Bank.

FILING DATE: The application was filed on July 14, 1995.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 5, 1995, and should be accompanied by proof of service on the applicant, 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, D.C. 20549. Applicant: Post Box D, 60262 Frankfurt-am-Main, Germany; cc: J. Eugene Marans, Esq., Cleary, Gottlieb, Steen & Hamilton, 1752 N Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson,

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Market Maker (''LMM'') Appointment Committee shall review LMM appointments at least semi-annually. The rule currently provides that the LMM Appointment Committee must review LMM appointments at least quarterly. *See* Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to James McHale, Attorney, Division of Market Regulation, Commission, dated May 23, 1995 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 35777 (May 30, 1995), 60 FR 31333.

[5] Pursuant to Rule 6.82, the program is also used to conduct evaluations of LMMs on the Options Trading Floor. The Exchange, through Amendment No. 1, also proposes to amend Rule 6.82(b)(4)(i) to require the LMM Appointment Committee to review LMM appointments on a semi-annual basis. *See* Amendment No. 1, *supra* note 3.

[6] The Commission approved the Exchange's Options Trading Crowd Performance Evaluation Pilot Program on a permanent basis on December 30, 1993. *See* Securities Exchange Act Release No. 33407, 59 FR 1043 (January 7, 1994).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 33407 (December 30, 1993), 59 FR 1043 (January 7, 1994).

[9] *Id.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Deutsche Bank requests an order to permit Deutsche Bank, any U.S. Investment Company, and any custodian for a U.S. Investment Company, to maintain foreign securities, cash, and cash equivalents (collectively, ''Assets'') in Malaysia in the custody of DBM. For the purposes of this application, ''foreign securities'' includes: (a) Securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States.

2. Deutsche Bank is a bank organized and existing under the laws of Germany. Deutsche Bank is regulated in Germany by the Federal Bank Supervisory Office (Bundesaufsichtamt für Kreditwesen). Deutsche Bank is the largest banking institution in Germany and currently provides worldwide financial services to foreign governments, central banks, financial institutions, and corporate and retail customers. In the United States, Deutsche Bank has branch banking operations, and as a result, is subject to the Bank Holding Company Act of 1956 and the International Banking Act of 1978.

3. DBM is a subsidiary of Deutsche Bank. DBM is regulated as a banking institution under Malaysian law by Bank Negara Malaysia, the central bank of Malaysia. Prior to October 1, 1994, Deutsche Bank provided custody services for U.S. Investment Companies holding securities in its branch in Malaysia. The Malaysian Banking and Financial Institutions Act of 1989 requires banking institutions operating in Malaysia to be locally incorporated. To comply with this legislation, on October 1, 1994, Deutsche Bank transferred substantially all of the assets, liabilities, and personnel of its Malaysian branch to DBM. Since October 1, 1994, there have been no contractual agreements by U.S. Investment Companies or their custodians relating to the assignment of custodial contracts to DBM.

Applicant's Legal Analysis

1. Deutsche Bank requires an order under section 6(c) of the Act exempting Deutsche Bank, any U.S. Investment Company, and any custodian for such U.S. Investment Company from section 17(f) of the Act to permit the deposit and custody of Assets in Malaysia with DBM.

2. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including a bank having at all times aggregate capital, surplus, and undivided profits of at least $500,000. A ''bank'', as that term is defined in section 2(a)(5) of the Act, includes: (a) A banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; and (c) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised or examined by state or federal authority having supervision over banks, and which is not operated for the purposes of evading the Act.

3. The only entities located outside the United States that section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of qualified U.S. banks. Rule 17f–5 expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5(c)(2)(i) defines the term ''Eligible Foreign Custodian'' to include a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated by that country's government or an agency thereof and that has shareholders' equity in excess of $200,000,000 or its equivalent.

4. Deutsche Bank meets the requirements for an Eligible Foreign Custodian under the rule since it has shareholders' equity well in excess of the equivalent of $200,000,000, is organized and existing under the laws of a country other than the United States, and is regulated as a bank under the laws of Germany.

5. DBM also satisfies the requirements of rule 17f–5 insofar as it is a banking institution incorporated or organized under the laws of a country other than the United States and is regulated as such by that country's government or an agency thereof. DBM, however, does not meet the minimum shareholders' equity requirement of rule 17f–5. Accordingly, DBM is not an Eligible Foreign Custodian and, absent exemptive relief, could not serve as a custodian and, absent exemptive relief, could not serve as a custodian for U.S. Investment Company Assets.

6. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Deutsche Bank submits that its request satisfies this standard.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed with respect to DBM will satisfy the requirements of rule 17f–5 in all respects other than with regard to the shareholders' equity of DBM.

2. Assets held in custody for U.S. Investment Companies or their custodians will be maintained in DBM only in accordance with an agreement (a ''Delegation Agreement'') required to remain in effect at all times during which DBM fails to satisfy all the requirements of rule 17f–5 pursuant to which Deutsche Bank would undertake to provide specified custodial or subcustodial services and delegate to DBM such of Deutsche Bank's duties and obligations as would be necessary to permit DBM to hold in custody in Malaysia Assets of U.S. Investment Companies. The Delegation Agreement among Deutsche Bank, DBM and a U.S. Investment Company or its custodian would further provide that Deutsche Bank's delegation of duties to DBM would not relieve Deutsche Bank of any responsibility to a U.S. Investment Company for which Deutsche Bank services as custodian or to a custodian for which Deutsche Bank serves as a subcustodian for any loss due to such delegation, except such loss as may result from political risk (e.g., exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) or other risks of loss (excluding bankruptcy or insolvency of

DBM) for which neither Deutsche Bank nor DBM would be liable under rule 17f–5 (e.g., despite the exercise of reasonable care, acts of God, and the like).

3. Deutsche Bank currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20400 Filed 8–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26355]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 11, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 5, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–8505)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its nonutility subsidiary companies, Southern Electric International, Inc. ("Southern Electric"), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338, Mobile Energy Services Holdings, Inc. ("Mobile Energy"), 900 Ashwood Parkway, Suite 450, Atlanta, Georgia 30338, and Mobile Energy Services Company, L.L.C., P.O. Box 2747, 200 Bay Bridge Road, Mobile, Alabama 36652, have filed a post-effective amendment under section 12(b) of the Act and rule 45 thereunder to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 12(d) of the Act and rules 43, 45, 46 and 54 thereunder.

By order dated December 13, 1994 (HCAR No. 26185) ("December 1994 order"), Southern was authorized to organize and acquire all of the common stock of Mobile Energy.[1] The December 1994 Order also authorized Mobile Energy to acquire the energy and recovery complex ("Energy Complex") at Scott Paper Company's ("Scott's") Mobile, Alabama paper and pulp mill. In connection with the acquisition of the Energy Complex, Mobile Energy and Scott entered into a Lease Assignment and Assumption Agreement pursuant to which Mobile Energy assumed the obligations of Scott under a lease agreement ("Lease Agreement") between Scott and The Industrial Development Board of the City of Mobile, Alabama ("Board") relating to $85 million outstanding principal amount of tax-exempt solid waste revenue refunding bonds, due 2019 ("Tax-Exempt Bonds") issued by the Board, as well as Scott's obligations under two separate reimbursement agreements ("Reimbursement Agreements") between Scott and certain commercial banks providing letters of credit ("Letters of Credit") in support of the Tax-Exempt Bonds. Mobile Energy's obligations to Scott under the Lease Assignment and Assumption Agreement are unconditionally guaranteed by Southern under the terms of a guaranty agreement between Southern and Scott.

By order dated July 13, 1995 (HCAR No. 26330) ("July 1995 Order"), Mobile Energy's rights and obligations under the Lease Assignment an Assumption Agreement were assigned to and assumed by Mobile Energy Services Company, L.L.C.[2] ("Project Company"), a new subsidiary of Mobile Energy.

The Lease Assignment and Assumption Agreement provides that Project Company (as assignee of Mobile Energy) shall, not later than September 15, 1995, cause the Board to redeem or remarket the Tax-Exempt Bonds to fully discharge and release Scott from all liabilities in respect of the Tax-Exempt Bonds and the Lease Agreement and, in connection therewith, to pay certain amounts payable under the terms of the Reimbursement Agreements. Project Company and Mobile Energy currently anticipate that a new series of tax-exempt bonds will be issued by the Board to redeem the outstanding Tax-Exempt Bonds in full. If for any reason closing on the sale of the new series of Tax-Exempt Bonds is delayed beyond September 15, 1995, Southern would be obligated to cash fund $85 million, plus unpaid interest on the Tax-Exempt Bonds, in order to redeem the Tax-Exempt Bonds in full.

In lieu of such a cash funded redemption, Southern and Project Company propose to either (i) enter into agreements with the current Letter of Credit banks whereby Southern would be substituted for Scott as the reimbursement party under the existing Reimbursement Agreements, or (ii) provide to the trustee under the Tax-Exempt Bond Trust Indenture one or more letters of credit in substitution for the outstanding Letters of Credit, again with Southern as reimbursement party under any related reimbursement agreement. It is proposed that the material terms of any substitute letter of credit and of the related reimbursement agreement would be substantially identical to the terms of the existing Letters of Credit and Reimbursement Agreements.

EUA Cogenex Corporation, et al. (70–8663)

EUA Cogenex Corporation ("Cogenex"), a wholly owned subsidiary of Eastern Utilities Associates, a registered holding company, both at P.O. Box 2333, Boston, Massachusetts 02107, and AYP Capital, Inc. ("AYP"), a wholly owned subsidiary of Allegheny Power System, Inc., a registered holding company, both at Tower Forty-Nine, 12 East 49th Street, New York, New York 10017, (Cogenex and AYP collectively, "Applicants"), have filed an application-declaration under sections 9(a), 10, 12(b), 12(f) and 13 of the Act and rules 45, 54, 90 and 91 thereunder.

Applicants propose to form a Delaware limited liability company ("JV ESCO") to provide energy conservation services in the District of Columbia, Pennsylvania, Maryland, Ohio, Virginia and West Virginia ("Territory"). Cogenex and AYP will each own 50% of JV ESCO and share equally in the capital contributions, allocation of profits and losses and distributions of JV ESCO. JV ESCO will be governed overall

[1] On May 17, 1995, Mobile Energy Services Company, Inc. changed its corporate name to Mobile Energy Services Holdings, Inc.

[2] Mobile Energy Services Company, L.L.C. has been added as a party to the application-declaration by post-effective amendment.