

CONSOLIDATED RESTATEMENT OF FEES<sup>4</sup>—Continued

| Service                               | Fee   |
|---------------------------------------|---|
| g. Status of Withdrawals by Transfer: |   |
| 1. Daily .....                        | \$100.00 per month.   |
| 24. PHILANET TERMINAL                 |   |
| a. Dedicated Line .....               | \$250.00 per month.   |
| b. Dial-up Line .....                 | \$150.00 per month.   |
| c. Installation .....                 | \$600.00  |
| d. Usage .....                        | No Charge.  |
| 25. POSITION LISTINGS .....           | \$45.00—per individual request (per date, per CUSIP) (plus costs).<br>\$360.00 annually—monthly basis (plus costs).<br>\$1,300.00 annually—weekly basis (plus costs). |

<sup>4</sup> Deleted text is bracketed. New text is italicized.

\*Transfer and deposit activity subject to pass-through costs.

The aforementioned fee revisions are intended to align fees with costs incurred to provide particular services. The proposed rule change is consistent with section 17A(b)(3)(D) of the Act<sup>5</sup> in that it provides for equitable allocations of reasonable dues, fees, and other charges among participants.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

Philadep does not perceive any burdens on competition as a result of the proposed rule change.

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

A Philadep participant bulletin will notify participants of changes to the fee schedule and advise them to whom they may direct questions upon receipt of the new fee schedule.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii)<sup>6</sup> and Rule 19b-4(e)(2)<sup>7</sup> promulgated thereunder because the proposed rule change establishes or changes a due, fee, or other charge imposed by Philadep. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at Philadep. All submissions should refer to File No. SR-Philadep-95-11 and should be submitted by February 20, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-1672 Filed 1-29-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21695; International Series Rel. No. 921; 812-9904]

**Banque Paribas (Deutschland) OHG et al.; Notice of Application**

January 23, 1996.

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

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

**APPLICANTS:** Banque Paribas (Deutschland) OHG ("BPD") and Banque Paribas ("Banque Paribas").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act from section 17(f).

**SUMMARY OF APPLICATION:** Applicants request an order that would permit registered management investment companies for which BPD acts as foreign custodian or subcustodian (other than investment companies registered under section 7(d)) ("Investment Companies") to maintain their foreign securities and other assets in the custody of BPD.

**FILING DATES:** The application was filed on December 15, 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 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 February 20, 1996, 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 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. Applicants, Banque Paribas (Deutschland) OHG, Grüneburgweg 14, 60322 Frankfurt A.M., Germany, and Banque Paribas, 3 rue d'Antin, 75002 Paris, France.

**FOR FURTHER INFORMATION CONTACT:** James M. Curtis, Senior Counsel, at (202) 942-0563, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(D) (1988).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

<sup>7</sup> 17 CFR 240.19b-4(e)(2) (1994).

<sup>8</sup> 17 CFR 200.30-3(a)(12) (1994).

**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.

#### Applicants' Representations

1. BPD, a general partnership organized under German law, is licensed and regulated as a banking institution under the laws of Germany. Banque Paribas, organized under the laws of France as a stock corporation, is one of the three general partners of BPD. The other general partners of BPD are Paribas Deutschland B.V., organized under the laws of The Netherlands as a limited liability corporation, and Paribas Verwaltungs-und Beteiligungsgesellschaft mbH, organized under the laws of Germany as a limited liability corporation. Both are subsidiaries of Banque Paribas. Under German law, each partner of BPD is jointly and severally liable to the creditors of BPD.

2. According to its partnership agreement (the "Partnership Agreement"), the scope of BPD's permissible business covers all segments of the banking business permitted for banking institutions by the *Bundesaufsichtsamt für das Kreditwesen* (the "BAK"). BAK has specifically authorized BPD to engage in all banking activities contemplated by the German Federal Banking Act, including, among others, deposit taking, lending, securities activities, guarantee, and custodianship activities. BPD currently maintains sizable activities in all such areas, including the custody of securities. As of December 31, 1994, BPD had assets in excess of U.S. \$1.1 billion and partners' equity of approximately U.S. \$69.4 million.

3. One hundred percent of Banque Paribas's voting rights and 98.5% of its equity is owned, directly and indirectly, by Compagnie Financiere de Paribas ("Paribas"), a leading French and international financial institution. At December 31, 1994, Banque Paribas had total consolidated assets of approximately U.S.\$175.7 billion, and consolidated shareholders' equity of approximately U.S.\$3.4 billion (excluding minority interests). At December 31, 1994, Paribas had total consolidated assets of approximately U.S.\$242.2 billion, and consolidated shareholders' equity of approximately U.S.\$8.1 billion (excluding minority interests).

4. Banque Paribas recently acquired the custodial services business of J.P. Morgan in several European countries, including Germany. As a result of this transaction, BPD acquired the systems,

the computer hardware and software, and the personnel dedicated to J.P. Morgan's German custodial services operations.

5. Applicants request an order under section 6(c) of the Act exempting BPD, Banque Paribas, and any Investment Company for which BPD acts as custodian or subcustodian, from section 17(f) of the Act. The order would permit BPD, as custodian of the securities and other assets of an Investment Company (the "Securities")<sup>1</sup> or as subcustodian of such Securities, to accept deposits of such Securities in Germany, but only under an agreement in which Banque Paribas assumes responsibility for certain losses of Securities held by BPD as custodian or subcustodian.

#### Applicants' Legal Analysis

1. Section 17(f) of the Act provides that an Investment Company may place and maintain its securities and similar assets in the custody of (a) a bank or banks meeting the requirements of section 26(a) of the Act, (b) a member firm of a national securities exchange, (c) the Investment Company itself, or (d) a system for the central handling of securities established by a national securities exchange or national securities association registered with the SEC. BPD does not fall within the definition of "bank" as that term is defined in the Act.<sup>2</sup>

2. Rule 17f-5 permits an Investment Company to deposit Securities with an "eligible foreign custodian," as defined therein. Such custodian, includes among other institutions, a banking institution or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government and that has shareholders' equity in excess of U.S. \$200,000,000 (or equivalent). Banque

<sup>1</sup> As used herein, the term "Securities" shall not include securities issued by the government of the United States or by any State or any political subdivision thereof or by any agency thereof or any securities issued by any entity organized under the laws of the United States or any State thereof (other than certificates of deposit, evidence of indebtedness and other securities, issued or guaranteed by an entity so organized which have been issued and sold outside the United States).

<sup>2</sup> Section 2(a)(5) of the Act defines a "bank" to include a banking institution organized under the laws of the United States, a member bank of the Federal Reserve System, and any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted for national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for purposes of evading the provisions of the Act.

Paribas qualifies as an "eligible foreign custodian" under rule 17f-5. BPD, however, does not currently qualify as an "eligible foreign custodian" because it does not meet the minimum shareholders' equity requirement.

3. Section 6(c) of the Act provides that the SEC may exempt any person from the provisions of the Act or any rules thereunder if and to the extent 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.

4. Applicants believe that the proposed arrangements meet the section 6(c) standard. BPD and Banque Paribas believe that the Paribas Agreement would provide Investment Companies which deposit Securities with BPD in Germany with the safety and security of an eligible foreign custodian under section 17(f) and rule 17f-5.

#### Applicants' Conditions

The requested exemption would be subject to the following conditions:

1. The foreign custody arrangements with BPD will comply with the provisions of rule 17f-5 in all respects, except those relating to the minimum shareholders' equity requirements of eligible foreign custodians.

2. Banque Paribas currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f-5(c)(2)(i).

3. An Investment Company or a custodian for an Investment Company will deposit Securities with BPD only in accordance with a three-party contractual agreement that will remain in effect at all times during which BPD fails to meet the requirement of rule 17f-5 relating to minimum shareholders' equity. Each agreement will be a three-party agreement among (a) Banque Paribas, (b) BPD, and (c) the Investment Company or custodian of the Securities of the Investment Company. Under the agreement, BPD will undertake to provide specified custodial or subcustodial services. The agreement will further provide that Banque Paribas will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by BPD of its responsibilities under the agreement to the same extent as if Banque Paribas had been required to provide custody services under such agreement.

For the SEC, by the Division of Investment Management, under delegated authority.  
Margaret H. McFarland,  
*Deputy Secretary.*

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[Rel. No. IC-21697; 812-9824]

### INDEX Fund, et al.; Notice of Application

January 23, 1996.

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

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

**APPLICANTS:** INDEX Fund ("INDEX"), INDEX II Series Fund ("INDEX II"), INDEX Fund 3 ("INDEX 3"), WRL Series Fund, Inc. ("WRL"), (collectively, the "Existing Funds"), any future registered open-end management investment company, or series thereof, for which INDEX Management, Inc ("IMI"), InterSecurities, Inc ("ISI"), or Western Reserve Life Assurance Co. of Ohio ("Western Reserve," and together with IMI and ISI the "Investment Advisers") or any entity controlling, controlled by, or under common control with the Investment Advisers, acts as investment adviser (the "Future Funds," and together with the Existing Funds, the "Funds"), and the Investment Advisers.

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 18(f)(1), 22(f), and 22(g), and rule 2a-7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and under section 17(d) of the Act and rule 17d-1 thereunder to permit certain joint arrangements.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit the Funds to enter into deferred compensation arrangements with their independent trustees.

**FILING DATES:** The application was filed on October 16, 1995 and amended on January 18, 1996.

**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 February 20, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the

request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 201 Highland Avenue, Largo, Florida 34640.

**FOR FURTHER INFORMATION CONTACT:** Marianne H. Khawly, Staff Attorney, at (202) 942-0562, 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 Reference Branch.

#### Applicants' Representations

1. INDEX, INDEX II, and INDEX 3 are Massachusetts business trusts registered under the Act as open-end management investment companies. INDEX and INDEX II currently offer one series and eleven series of shares, respectively, that are continuously offered for sale to the general investing public. INDEX 3 currently consists of one series of shares but discontinued its sale to new investors effective June 15, 1990. WRL is a Maryland Corporation registered under the Act as an open-end management investment company. WRL currently offers eighteen series of shares, one of which is a money-market series, that are continuously offered for sale to insurance company separate accounts that fund variable annuity contracts.

2. Each of the Investment Advisers is registered under the Investment Advisers Act of 1940. IMI is the investment adviser of INDEX, INDEX 3, and the following five INDEX II portfolios: Growth Portfolio, Global Portfolio, Flexible Income Portfolio, Balanced Portfolio, and Capital Appreciation Portfolio. ISI is the investment adviser to the remaining six INDEX II portfolios: Tax-Exempt Portfolio, Income Plus Portfolio, Aggressive Growth Portfolio, Equity Income Portfolio, Tactical Asset Allocation Portfolio, and C.A.S.E. Portfolio. Western Reserve is the investment adviser to each of the WRL portfolios.

3. Each Existing Fund has a board of trustees/directors (collectively, the "boards"), a majority of the members of which are not "interested persons" (the "Independent Trustees") of such Existing Fund within the meaning of section 2(a)(19) of the Act. The boards of INDEX, INDEX II, and INDEX 3 currently consist of the same seven persons, five

of whom are Independent Trustees. Each of the five Independent Trustees currently is entitled to receive a total annual retainer of \$13,000 of which INDEX, INDEX II, and INDEX 3 each pay a pro rata share based on its relative net assets. In addition, each of the five Independent Trustees receives \$1,250 plus reimbursement for incidental expenses for each INDEX II board meeting attended and \$500 plus reimbursement for incidental expenses for each INDEX or INDEX 3 board meeting attended.<sup>1</sup> The board of WRL currently consists of five persons, three of whom are Independent Trustees. Each WRL Independent Trustee is entitled to receive an annual fee of \$6,000, and \$500 for each board meeting attended plus reimbursement for incidental expenses.

4. Applicants request an order to permit the Independent Trustees to elect to defer receipt of all or a portion of their trustees' fees pursuant to a deferred compensation plan (the "Plan") and related election agreement (the "Agreement") entered into between each Independent Trustee and the appropriate Fund. Under the Plan, the Independent Trustee could defer payment of trustees' fees (the "Deferred Compensation") in order to defer payment of income taxes, or for other reasons.

5. Under the Plan, the deferred fees payable by a Fund to a participating Independent Trustee (a "Participant") will be credited to a book reserve account established by the Fund (an "Account"), as of the date such fees would have been paid to such Independent Trustee. The value of the Account as of any date will be determined by reference to a hypothetical investment in Class A shares of one or more portfolios of INDEX II ("Underlying Securities"), as selected by a Participant.

6. The election to participate in the Plan must be made on or before September 30 preceding the calendar year during which the amounts to be deferred, absent deferral, would be paid to the Participant. The Plan's effective date is January 1, 1996. In order to facilitate implementation of the Plan, a

<sup>1</sup> The boards of INDEX, INDEX II, and INDEX 3 have adopted a policy whereby any Independent Trustee in office on September 1, 1990 who has served at least three years may, subject to certain limitations, elect upon his or her resignation to serve as a trustee emeritus. A trustee emeritus has no authority, power, or responsibility with respect to any INDEX, INDEX II, or INDEX 3 matter. A trustee emeritus, however, is entitled to receive an annual fee equal to one-half the fee then payable per annum to the Independent Trustees of the Fund or Funds from which he or she resigned, plus reimbursement of expenses incurred for attendance at board meetings.