

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24751A; 812-12294]

### Stratevest Funds, et al.; Notice of Application

December 11, 2000.

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

**ACTION:** Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

**SUMMARY:** Applicants request an order to permit the proposed reorganizations of two series (the "Acquired funds") of the Forum Funds with and into two series of the Stratevest Funds (the "Acquiring Funds," and together with the Acquired Funds, the "Funds"). Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

*Applicants:* Stratevest Funds, Forum Funds, The Stratevest Group, N.A. ("Stratevest Group"), and Forum Investment Advisors, LLC ("Forum Advisors").

*Filing Dates:* The application was filed on October 10, 2000. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

*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 December 28, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service.<sup>1</sup> 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: Stratevest Funds and Stratevest Group, 111 Main Street, Burlington, Vermont 05402-0409; Forum Funds and Forum

Advisors, Two Portland Square, Portland, Maine 04101.

**FOR FURTHER INFORMATION CONTACT:** Mary Kay Frech, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

#### Applicants' Representations

1. Stratevest Funds, a Delaware business trust, is registered under the Act as an open-end management investment company and currently offers four series. Stratevest Funds is organizing two new series, the Stratevest Large Cap Core Fund ("Stratevest Core Fund") and the Stratevest Intermediate Bond Fund ("Stratevest Bond Fund"), which will be Acquiring Funds. The Stratevest Group, a national banking association, serves as investment adviser to the Acquiring Funds and is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act"). On or before the Reorganizations (as defined below), the Stratevest Group is expected to own, in a fiduciary capacity, more than 25% of the outstanding voting shares of the Stratevest Bond Fund as a result of the Stratevest Bond Fund's proposed acquisition of assets of certain common and collective trust funds.

2. Forum Funds, a Delaware business Trust, is registered under the Act as an open-end management investment company and currently offers twenty-one series, two of which are Acquired Funds: the Investors Equity Fund ("Forum Equity Fund") and the Investors High Grade Bond Fund ("Forum Bond Fund"). Stratevest Group is the investment adviser for Forum Equity Fund, and owns, in a fiduciary capacity, more than 25% of the outstanding voting shares of the Forum Bond Fund. Forum Advisors is an investment adviser registered under the Advisers Act and serves as investment adviser to the Forum Bond Fund. The Acquired Funds and Acquiring Funds are collectively referred to as the Funds.

3. On August 15, 2000 and October 2, 2000, the boards of trustees of the Acquiring Funds and the Acquired Funds (together, the "Boards"), respectively, including all the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), unanimously approved the agreements and plans of

reorganization between the Funds (the "Reorganization Agreements"). Under the Reorganization Agreements, each Acquiring Fund will acquire all the assets and liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund (the "Reorganizations").<sup>2</sup> The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund's shares determined as of the close of business on the business day immediately preceding the day of the closing of each Reorganization ("Closing Date"), currently anticipated to occur on or after December 20, 2000. The value of the assets of the Funds will be determined according to the Funds' then-current prospectuses and statements of additional information. As soon as reasonably practical after the Closing Date, each Acquired Fund will be liquidated by the distribution of the Acquiring Fund shares *pro rata* to the shareholders of the Acquired Fund.

4. Applicants state that the investment objectives and strategies of each Acquired Fund are similar to those of the corresponding Acquiring Fund. The Funds offer one class of shares. The Acquired Funds' shares are subject to either a front-end sales charge or a contingent deferred sales charge, but are not subject to a distribution fee adopted under rule 12b-1 of the Act or shareholder services fees. The Acquiring Funds' shares are subject to a front-end sales charge, a rule 12b-1 distribution fee, and shareholder services fee. Shareholders of the Acquired Funds will not be subject to a contingent deferred sales charge upon redemption of the Acquiring Fund shares that they receive in connection with the Reorganizations. No sales charges or exchange fee will be imposed in connection with the Reorganizations. Stratevest Group, Federated Services Company, and, possibly, Forum Financial Group will bear the costs associated with the Reorganizations.

5. The Boards, including all of the Independent Trustee, determined that the participation of each Acquiring and Acquired Fund in a Reorganization was in the best interests of each Fund and its shareholders, and that the interests of the shareholders of each Fund would not be diluted as a result of the Reorganization. In approving the Reorganizations, the Boards considered various factors, including: (a) The

<sup>1</sup> A notice was originally issued on November 28, 2000 (Investment Company Act Release No. 24751) giving interested persons until December 20, 2000, to request a hearing. However, the original notice was not published in the Federal Register, therefore, interested persons have until December 28, 2000, to request a hearing on the application.

<sup>2</sup> The Acquired Funds and their corresponding Acquiring Funds are: (1) Forum Equity Fund and Stratevest Core Fund and (2) Forum Bond Fund and Stratevest Bond Fund.

investment objectives, strategies, techniques, investment risks and limitations of each Acquired Fund and their compatibility with those of the corresponding Acquiring Fund; (b) the investment advisory and other fees paid by each Acquiring Fund and the projected expense ratio of each Acquiring Fund as compared to those of the corresponding Acquired Fund; (c) the terms and conditions of each Reorganization Agreement; and (d) the anticipated tax consequences of the Reorganizations for the Funds and their shareholders. In addition, the Forum Board considered: (a) The small asset size of each Acquired Fund; (b) the likelihood that each Acquired Fund's service providers may not be able to maintain their current fee waivers; and (c) the fact that the Reorganizations would permit shareholders to own shares in a new fund without realizing tax consequences that would be present if the Acquired Funds were to liquidate.

6. The Reorganizations are subject to certain conditions, including that: (a) the shareholders of each Acquired Fund will have approved the Reorganizations; (b) the Funds will have received opinions of counsel concerning the tax-free nature of the Reorganizations; and (c) applicants will have received exemptive relief from the Commission to permit the Reorganizations. The Reorganization Agreements may be terminated and the Reorganizations abandoned at any time prior to the Closing Date by the Boards. Applicants agree not to make any material changes to the Reorganization Agreements without prior Commission approval.

7. Registration Statements on Form N-14 with respect to the Reorganizations were filed with the Commission on September 8, 2000. Proxy solicitation materials were mailed to shareholders of the Acquired Funds on November 1, 2000. A shareholders meeting of the Acquired Funds is scheduled for December 1, 2000.

#### Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power

to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

3. Applicants state that Stratevest Group is investment adviser to the Stratevest Core Fund and Stratevest Group holds of record more than 25% of the outstanding voting securities of the Forum Equity Fund. In addition, applicants state that, on or before the Reorganization, Stratevest Group will hold of record more than 25% of the outstanding voting securities of the both the Forum Bond Fund and the Stratevest Bond Fund. Because of these relationships and ownership positions, the Acquired Funds and their corresponding Acquiring Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a-8 and therefore unable to rely on the rule.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b). Applicants note that the Boards, including all of the Independent Trustees, found that participation in the Reorganizations is in the best interests of each Fund and its shareholders and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganizations. Applicants also note that the Reorganizations will be based on the Funds' relative net asset value.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43660; File No. SR-Amex-00-57]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Increase to One Hundred the Maximum Permissible Number of Equity and Index Option Contracts Executable Through AUTO-EX

December 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 28, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to increase to one hundred the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, AUTO-EX. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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

In its filing with the Commission, the Amex 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. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

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