regulations regarding verification of identity and amendment to records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

1. The individual to whom the information applies.
2.OPM–IS investigative files.
3. Officials of OPM and OPM–IS contractors.
4. Federal agencies, the Department of Defense, and external and internal inquiries.
5. The public.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6) or (7) is exempt from the requirements of the Privacy Act that relate to providing an accounting of disclosures to the data subject and access to and amendment of records (5 U.S.C. 552(c)(3) and (d)).

5 U.S.C. 552A(K)

1. Properly classified information obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy.
2. Investigatory material compiled for law enforcement purposes other than material within the scope of this subsection.
3. Investigatory material maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 of the U.S. Code.
4. Investigatory material that is required by statute to be maintained and used solely as a statistical record.
5. Investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment and Federal contact or access to classified information. Materials may be exempted to the extent that release of the material to the individual whom the information is about would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.
6. Testing and examination materials, compiled during the course of a personnel investigation, that are used solely to determine individual qualifications for appointment or promotion in the Federal service, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.
7. Evaluation materials, compiled during the course of a personnel investigation, that are used solely to determine potential for promotion in the armed services can be exempted to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

[FR Doc. 01–20220 Filed 8–10–01; 8:45 am]

BILLING CODE 6325–40–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–1960 803–154]

Capital Guardian Trust Company, et al.; Notice of Application

August 7, 2001.

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

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

Applicants: Capital Guardian Trust Company (''CGTC'') and Hirtle Callaghan Trust (''Trust'').

Relevant Advisers Act Sections: Exemption requested under section 206A of the Advisers Act from section 205 of the Advisers Act and Advisers Act rule 205–1.

SUMMARY OF APPLICATION: Applicants request an order permitting CGTC to charge a performance fee based on the performance of that portion of a Trust portfolio managed by CGTC (''CGTC Account''). Applicants further request that the order permit them to commute the performance-related portion of the fee using changes in the CGTC Account's gross asset value rather than net asset value.

FILING DATES: The application was filed on November 27, 2000, and amended on July 29, 2001.

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 copies of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 4, 2001, 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 Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Capital Guardian Trust Company, 333 South Hope Street, Los Angeles, California 90071. The Hirtle Callaghan Trust, 575 East Swedesford Road, Wayne, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: Robert L. Tuleya, Staff Attorney, or Jennifer L. Sawin, Assistant Director, at (202) 942–0719 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch.

Applicant's Representations

1. CGTC is a California-chartered, non-depository trust company. CGTC is a ''bank'' within the meaning of section 202(a)(2) of the Advisers Act. CGTC serves as investment adviser to the Trust and other registered investment companies. Before CGTC submitted its initial application for registration as an investment adviser under the Advisers Act, and until the effective date of section 217 of the Gramm-Leach-Bliley Act, CGTC, as a bank, was excluded from the definition of ''investment adviser'' under section 202(a)(11) of the Advisers Act, and thus was not required to register as an investment adviser under the Advisers Act. The Gramm-Leach-Bliley Act amended the Advisers Act to include a bank that serves as an investment adviser to a registered investment company in the definition of ''investment adviser.'' To comply with the Advisers Act, as amended, CGTC submitted its application for registration as an investment adviser with the commission through the IARD. The Commission issued an order granting CGTC's registration as an investment adviser under the Advisers Act on April 27, 2001.

2. The Trust is an open-end management investment company registered with the Commission under the Investment Company Act of 1940 (''1940 Act''). The Trust was organized by Hirtle, Callaghan & Co. (''Hirtle Callaghan''), an investment adviser registered with the Commission under the Advisers Act. The Trust is a series

company that currently consists of several separate investment portfolios. Shares of the Trust are available only to clients of Hirtle Callaghan or clients of financial intermediaries, such as investment advisers, that are acting in a fiduciary capacity with investment discretion and that have established relationships with Hirtle Callaghan.

3. Hirtle Callaghan serves as a ''manager of managers'' for the Trust. Pursuant to its agreement with the Trust, Hirtle Callaghan is not authorized to exercise investment discretion with respect to the Trust's assets. Hirtle Callaghan is responsible for monitoring the overall investment performance of the Trust's portfolios and the performance of the portfolio managers who manage the Trust's portfolios. Hirtle Callaghan also may from time to time recommend that the Trust's Board of Trustees retain additional portfolio managers or terminate existing portfolio managers. Authority to select new portfolio managers and reallocate assets among the portfolio managers, however, resides with the Trust's Board.

4. CGTC and Artisan Partners Limited Partnership (''Artisan'') provide portfolio management services to the International Equity Portfolio (''Portfolio'') of the Trust. Pursuant to a portfolio management agreement, CGTC provides portfolio management services for a portion of the Portfolio's assets that the Trust's Board allocates to CGTC (''CGTC Account''). CGTC and Artisan each manage a separate portion of the Portfolio, each acting as though it were advising a separate investment company. Percentage limitations on investments are applied to each portion of the Portfolio without regard to investments in the other adviser's portion of the Portfolio. Each adviser receives portfolio information, from the Trust or its custodian, only about the portion of the Portfolio assigned to it and not about positions held by the Portfolio as a whole. Each adviser generally is responsible for preparing reports to the Trust and the board only with respect to its discrete portion of the Portfolio.

5. Neither CGTC nor any of its affiliates is affiliated with Hirtle Callaghan, the Trust, or Artisan.

6. CGTC's services to the Trust are limited to investment selection for the CGTC Account, placement of transactions for execution and certain compliance functions directly related to such services. Neither CGTC nor any of its affiliates acts as a distributor or sponsor for the Trust or Portfolio. No member of the Trust's Board is affiliated with CGTC or any of its affiliates. CGTC is currently entitled to receive an investment advisory fee based on a percentage of the assets in the CGTC Account, payable quarterly.

7. On April 14, 2000, the Trust's Board approved a portfolio management agreement between CGTC and the Trust (the ''CGTC Agreement'') under which CGTC is entitled to receive compensation for portfolio management services provided to the Trust based in part on the performance achieved by the CGTC Account. Only July 26, 2000, the shareholders of the Portfolio approved the agreement.[1]

8. Under the CGTC Agreement, CGTC is entitled to received an investment advisory fee based on a percentage of the assets in the CGTC Account. After the CGTC Agreement has been in effect for 12 months following the first business day of the month following the date on which the agreement became effective (''the Initial Period''), CGTC will be entitled to receive quarterly payments of a base fee (''Base Fee''), calculated at the annual rate of 0.40 percent of the average net assets of the CGTC Account, adjusted by a ''Performance Component.'' Each such quarterly payment will consist of ¼ of the Base Fee plus or minus the Performance Component multiplied by the average daily net assets of the CGTC Account for the immediately preceding 12-month period on a ''rolling basis.''[2] The Performance Component would equal 12.5 percent of the difference between (i) the total return of the CGTC Account during the 12 months immediately preceding the calculation date, calculated without regard to expenses incurred in the operation of the CGTC account (''Gross Total Return'') and (ii) the total return of the Morgan Stanley Capital International Europe, Australasian, Far East Index (''EAFE Index Return'') for the same period plus a performance hurdle of 0.40 percent (or 40 basis points).[3] None of the expenses of the Portfolio, including the advisory fee paid to CGTC, would be deducted from the Gross Total Return of the CGTC account.[4] The maximum annual fee payable to CGTC for any 12-month period would not exceed 0.60 percent (60 basis points) of the average net assets of the CGTC Account, and the minimum fee payable for any such period would be 0.20 percent (20 basis points).[5]

Applicants' Legal Analysis

1. Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into any investment advisory agreement that provides for compensation to the adviser on the basis of a share of capital gains or capital appreciation of a client's account.

2. Section 205(b) of the Advisers Act provides a limited exception to this prohibition, permitting an adviser to charge a registered investment company a fee that increases and decreases ''proportionately with the investment performance of the investment company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment

[1] The proxy statement associated with this meeting specifically informed the shareholders that, in the event that CGTC became subject to registration under the Advisers Act, the fulcrum fee arrangement would be suspended unless and until CGTC received assurances from the Commission or its staff that calculating the fee on the basis described herein would not be viewed as inconsistent with the Advisers Act. The proxy statement also noted that there could be no guarantee that the Commission or its staff would give such assurances.

[2] ''Rolling Basis'' means that, at each quarterly fee calculation, the Gross Total Return of the CGTC Account, the EAFE Index Return and the average daily net assets of the CGTC Account for the most recent quarter will be substituted for the corresponding values of the earliest quarter included in the prior fee calculation.

[3] Applicants state that the CGTC Agreement, as approved both by the Trust's Board and the shareholders of the Portfolio prior to its effective date, contains an error. The compensation schedule (''Schedule A'' to the CGTC Agreement) incorrectly states that the Performance Component with respect to periods following the Initial Period (''Subsequent Measuring Periods'') will be made in an amount equal to ⅛ (12.5%) of the difference between the Gross Total Return of the CGTC Account and the EAFE Index Return. The correct factor is ¼ (25%) of that difference. The correct factor was negotiated by the Trust and CGTC and was designed to reflect the fact that, while advisory fees are calculated on an annual basis, advisory fee payments to CGTC are paid on a quarterly basis. To correct this error, Trust management represents that it will submit an amendment (''Correcting Amendment'') to the Trust's Board and to shareholders of the Portfolio in a manner consistent with the requirements of section 15(a) and rule 18f–2 under the 1940 Act. Trust management anticipates that final action with respect to the Correcting Amendment will be taken by the Board and shareholders before the date on which performance based fee adjustments (if any) to which CGTC may be entitled with respect to any Subsequent Measuring Period will be paid. Unless and until the Correcting Amendment is approved (and assuming that the CGTC Agreement is not sooner terminated in accordance with its terms or relevant law), the CGTC Agreement will remain in effect in the form in which is was approved by the Portfolio's shareholders on July 26, 2000 and the accrual of investment advisory fees payable by the Portfolio to CGTC will continue to be made in accordance with the terms of such Agreement.

[4] The performance of the CGTC account reflects brokerage and transaction costs.

[5] If application of the Performance Component would result in an annual fee at a rate lower than 20 basis points, the amount of any excess fee paid for the first year would be credited to the Portfolio in subsequent quarters before additional fee amounts would be payable to CGTC. If the CGTC Agreement is terminated, the Trust would not recoup any outstanding excess fees that had been paid in previous quarters.

performance as the Commission by rule, regulation or order may specify.''

3. Under rule 205–1 of the Advisers Act, the ''investment performance'' of an investment company must be computed based on the change in the investment company's net asset value per share.

4. Applicants request exemptive relief from section 205 and rule 205–1 to permit CGTC to charge the fee in question (i) applying the fee only to the CGTC Account and not to the Portfolio as a whole, and (ii) computing the Performance Component measured by the change in the CGTC Account's gross asset value, rather than its net asset value. Applicants also request exemptive relief for CGTC and its affiliates to enter into similar fee arrangements with other investment companies, provided certain criteria are met.

5. Applicants state that Congress, in adopting and amending section 205 of the Advisers Act, and the Commission, in adopting rule 205–1, put into place safeguards designed to ensure that investment advisers would not take advantage of advisory clients.

6. Applicants assert that the Commission required that performance fees be calculated based on the net asset value of the investment company's shares to prevent a situation where an adviser could earn a performance fee even though investment company shareholders did not derive any benefit from the adviser's performance after the deduction of fees and expenses.

7. Applicants state that, unlike traditional performance fee arrangements, CGTC does not receive the Performance Component of its fee unless its management of the CGTC Account has resulted in performance in excess of the EAFE Index Return plus a ''performance hurdle'' equal to the 0.40 percent base fee. Applicants assert that adding the 0.40 percent hurdle to the performance of the EAFE Index has an effect similar to deducting CGTC's fees.[6] Applicants argue that, therefore, the Portfolio's shareholders have protections similar to those contemplated by the net asset value requirement of rule 205–1.

8. Applicants state that Congress' concern in enacting the safeguards of section 205 came about because the vast majority of investment advisers exercised a high level of control over the structuring of the advisory relationship. Applicants state that the fee in question, however, was negotiated at arm's length between the parties. Applicants state that CGTC has little, if any, influence over the overall management of the Trust or the Portfolio beyond stock selection. Management functions of the Trust and the Portfolio reside in the Trust's Board. The Trust itself is directly and fully responsible for supervising the Trust's service providers and monitoring expenses of each of the Trust's portfolios. The Trust's Board is responsible for allocating the assets of the several portfolios among the portfolio managers. Neither CGTC nor any of its affiliates sponsored or organized the Trust or serves as a distributor or principal underwriter of the Trust. Neither CGTC nor any of its affiliates owns any shares issued by the Trust. No officer, director or employee of CGTC, nor of any CGTC's affiliates, serves as an executive officer or director of the Trust. Neither CGTC nor any of its affiliates is an affiliated person of Hirtle Callaghan or any other person who provides investment advice with respect to the Trust's advisory relationships (except to the extent that such affiliation exists solely by reason of CGTC serving as investment adviser to the Trust).

9. Applicants argue that the fulcrum fee arrangement is consistent with the purposes intended by rule 205–1 because the CGTC Agreement was negotiated at arm's-length with the Trust and that the Trust therefore does not need the protections afforded by calculating a performance fee based on net assets. Applicants argue that the proposed fee arrangement is therefore consistent with the underlying policies of section 205 and rule 205–1. Applicants argue that granting the exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Advisers Act and would therefore be consistent with the exemptive standards in section 206A of the Advisers Act.

Applicants' Conditions

1. If the Base Fee changes, the performance hurdle will be changed to match the Base Fee.

2. To the extent CGTC, or an affiliate of CGTC, relies on the requested order with respect to advisory arrangements with other investment companies that it advises, those arrangements will meet the following requirements: (i) The investment advisory fee will be negotiated between CGTC, or the applicable affiliate of CGTC, and the investment company or its primary investment adviser; (ii) the fee structure will contain a performance hurdle that is, at all times, no lower than the base fee; (iii) neither CGTC nor any of its affiliates will serve as distributor or sponsor of the investment company; (iv) no member of the board of the investment company will be affiliated with CGTC or its affiliates; (v) neither CGTC nor any of its affiliates will organize the investment company; and (vi) neither CGTC nor any of its affiliates will be an affiliated person of any primary adviser to the investment company or of any other person who provides advice with respect to the investment company's advisory relationships (except to the extent that CGTC and/or its affiliates may be affiliated with another portfolio manager by virtue of the fact that CGTC serves as a portfolio manager to the investment company or to another investment company.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–20233 Filed 8–10–01; 8:45 am]

BILLING CODE 8010–01–M

[6] If the Base Fee changes, the performance hurdle also would be changed to match the fee.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44657; File No. SR–BSE–2001–04]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. Relating to Capital Requirements for Specialists and Competing Specialists Trading Portfolio Depositary Receipts

August 6, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2001, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the BSE.[3] The

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

[2] 17 CFR 240.19b–4.

[3] On August 1, 2001, the BSE filed Amendment No. 1 to the proposal. *See* letter from John A. Boese, Assistant Vice President, Rule Development and Market Structure, BSE, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 31, 2001 (''Amendment No. 1''). In Amendment No. 1, the BSE states that it has carefully evaluated volume and price measures for the portfolio depositary receipts (''PDRs'') that BSE specialists trade actively and concluded that the proposed equity requirement will continue to ensure that BSE