and any person directly or indirectly controlling, controlled by, or under common control with such other person, and if such other person is an investment company, any investment adviser thereof.

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

4. Applicants believe that they may not rely upon rule 17a–8 because the Funds may be affiliated for reasons other than those set forth in the rule. GE indirectly owns 100% of the outstanding voting securities of GNA Capital, the adviser to the Acquired Funds. GE also owns, with power to vote, shares of certain of the Funds as described in the application, which constitute between 7% and 83% of the outstanding shares of each such Fund. Because of this ownership, the Acquiring Funds may be deemed an affiliated person of the Acquired Funds, and vice versa, for reasons not based solely on their common adviser. Consequently, applicants are requesting an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization.

5. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if 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; the proposed transaction is consistent with the policy of each registered investment company concerned; and the proposed transaction is consistent with the general purposes of the Act.

6. Applicants submit that the terms of the proposed Reorganization satisfy the standards set forth in section 17(b), in that the terms are fair and reasonable and do not involve overreaching on the part of any person concerned. The boards of trustees of the Company and the Trust, including their non-interested trustees, have reviewed the terms of the Reorganization as set forth in the Agreement, including the consideration to be paid or received, and have found that participation in the Reorganization is in the best interests of the Company, the Trust, and each Fund, and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also note that the exchange of each Acquired Fund's assets and liabilities for the shares of the corresponding Acquiring Fund will be based on the Funds' relative net asset values.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 97–23599 Filed 9–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22803; 812–10758]

Robertson Stephens Investment Trust, et al.; Notice of Application

August 29, 1997.

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

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from section 15(a) of the Act.

SUMMARY OF APPLICATION: Robertson, Stephens & Company Group, L.L.C. and Robertson, Stephens & Company, Inc., parent companies (''Parents'') of Robertson, Stephens & Company Investment Management, L.P. (''RSIM, L.P.''), and Robertson Stephens Investment Management, Inc. (''RSIM, Inc.'') (each of RSIM, L.P. and RSIM, Inc., an ''Adviser,'' and together, the ''Advisers''), have entered into an agreement and plan of merger with BankAmerica Corporation (''BankAmerica'') to merge with a wholly-owned subsidiary of BankAmerica. The indirect change in control of the Advisers will result in the assignment, and thus the termination, of the existing advisory contracts between Robertson Stephens Investment Trust (the ''Trust'') and the Advisers. The order would permit the implementation, without shareholder approval, of a new investment advisory agreement for a period of up to 60 days following the date of the change in control of the Advisers. The order also would permit the Advisers to receive all fees earned under the new advisory agreement following shareholder approval.

APPLICANTS: Trust, RSIM, L.P. and RSIM, Inc.

FILING DATES: The application was filed on August 15, 1997.

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 September 24, 1997, 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, 555 California Street, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

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, 450 Fifth Street NW., Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. The Trust currently offers twelve separate series (the ''Funds'') to the public. The Advisers are registered investment advisers under the Investment Advisers Act of 1940. RSIM, L.P. serves as investment adviser to eleven of the Funds and RSIM, Inc. serves as investment adviser to the Twelfth Fund.

2. On June 8, 1997, BankAmerica entered into an agreement and plan of merger with the Parents and their affiliates, under which each of the Parents would be merged into a subsidiary of BankAmerica (the ''Merger''). As a result of the Merger, BankAmerica will become the owner of the entire beneficial interest in RSIM, L.P. and RSIM, Inc. Applicants expect consummation of the Merger on September 30, 1997.

3. Applicants request an exemption to permit implementation, prior to obtaining shareholder approval, of new investment advisory agreements (''New Advisory Agreements'') with the Advisers. The requested exemption will cover an interim period of not more than 60 days beginning on the date the Merger is consummated and continuing, in respect of each Fund, through the

date on which a New Advisory Agreement is approved or disapproved by the Fund's shareholders (the ''Interim Period''). The New Advisory Agreements will contain terms and conditions identical to those of the existing advisory agreements (''Existing Advisory Agreements''), except for their effective dates, termination dates, and escrow provisions. The aggregate contractual rate chargeable for the advisory services under each New Advisory Agreement will remain the same as under the Existing Advisory Agreements.

4. On July 22, 1997, the board of trustees of the Trust (the ''Board'') held a meeting to discuss the Merger and its implications for the Funds. At the meeting, a majority of the members of the Board, including a majority of the Board members who are not ''interested persons'' of the Funds, as that term is defined in section 2(a)(19) of the Act (the ''Independent Trustees''), voted in accordance with section 15(c) of the Act to approve the New Advisory Agreements and to submit the New Advisory Agreements to the shareholders of each of the Funds at a meeting to be held on September 30, 1997 (the ''Meeting''). The Board will meet in person prior to the start of the Interim Period to approve the escrow provisions of each of the New Advisory Agreements in accordance with section 15(c) of the Act.

5. Applicants state that proxy materials for the Meeting were mailed on August 20, 1997. Applicants believe that it is possible that shareholders of each of the Funds will approve the New Advisory Agreements at the Meeting. However, it is also possible that an insufficient number of votes will have been received by that date to act upon the New Advisory Agreements in respect of one or more Funds, and that if may be necessary to adjourn the meeting for a period not to exceed 60 days following the Merger to permit additional shareholders to vote their shares by proxy. Applicants believe that the requested relief is necessary to permit continuity of investment management of the Funds during the period following the Merger so that the investment program and the delivery of related services for each Fund will not be disrupted if the Meeting for that Fund is adjourned.

6. Applicants also request an exemption to permit the Advisers to receive from each Fund, upon approval of that Fund's shareholders, any and all fees earned (plus interest) under the related New Advisory Agreement in effect during the Interim Period. Applicants state that the fees paid during the Interim Period will be unchanged from the fees paid under the Existing Advisory Agreements.

7. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to an Adviser during the Interim Period under a New Advisory Agreement will be paid by the Fund into an interest-bearing escrow account maintained by the escrow agent. The escrow agent will release the monies held in the escrow account (including any interest earned): (a) To the Adviser only upon approval of the New Advisory Agreement by the Fund's shareholders in accordance with section 15 of the Act; or (b) to the Fund if the Interim Period has ended and the New Advisory Agreement has not received the requisite shareholder approval. Before any such release is made, the Board will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Section 15(a) further requires that such written contract provide for automatic termination in the event of its ''assignment.'' Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Section 2(a)(9) of the Act defines ''control'' as the power of exercise a controlling influence over the management or policies of a company, and beneficial ownership of more than 25% of the voting securities of a company is presumed under section 2(a)(9) to reflect control.

2. Applicants state that, following the completion of the Merger, BankAmerica will own 100% of the voting securities of the Parents. Applicants believe, therefore, that the Merger will result in an ''assignment'' of the Existing Advisory Agreements and that the Existing Advisory Agreements will terminate by their terms upon consummation of the Merger.

3. Rule 15a–4 provides, in pertinent part, that if an investment advisory contract with an investment company is terminated by an assignment in which the adviser does not directly or indirectly receive a benefit, the adviser may continue to act as such for the company for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of director (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser ''directly or indirectly receives money or other benefit'' in connection with the assignment. Applicants state that because of the Advisers and their affiliates may be deemed to receive a benefit in connection with the Merger, applicants may not rely on rule 15a–4.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the terms and timing of the Merger were determined by the Parents and BankAmerica in response to a number of factors beyond the scope of the Act and unrelated to the Funds and the Advisers. Applicants submit that it is in the best interests of shareholders to have sufficient time to consider and return proxies and to hold a shareholder meeting. Applicants believe that the Interim Period would facilitate the orderly and reasonable consideration of the New Advisory Agreements with respect to those Funds whose shareholders have not voted in sufficient numbers by the date of the Meeting.

6. Applicants submit that the scope and quality of services provided to the Portfolios during the Interim Period will not be diminished. During the Interim Period, the Advisers would operate under the New Advisory Agreements, which are substantively the same as the Existing Advisory Agreements. The Advisers have advised the Board that they are not aware of any material changes in the personnel who will provide investment management services during the Interim Period. Accordingly, the Funds should receive, during the Interim Period, the same advisory services, provided in the same manner and at the same fee levels, by substantially the same personnel as they received before the Merger.

7. Applicants contend that the relationship between each of the Funds and the Advisers has been a beneficial

one to the shareholders of the Funds, and that it would be in no one's interests for the relationship to be impaired because the Advisers cannot receive fees for the services they provide during the Interim Period. In addition, the fees to be paid during the Interim Period will be unchanged from the fees paid under the Existing Advisory Agreements.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. Each New Advisory Agreement will have the same terms and conditions as the respective Existing Advisory Agreements, except for the effective date, termination date, and escrow provisions.
2. Advisory fees payable by a Fund to an Adviser during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid: (a) to the Adviser in accordance with the relevant New Advisory Agreement, after the requisite approval is obtained; or (b) to the Fund, in the absence of such approval.
3. The Trust will hold a meeting of shareholders to vote on approval of the New Advisory Agreements for the Funds on September 30, 1997, or within the 60-day period thereafter.
4. None of the Funds will bear the costs of preparing and filing the application, or any costs relating to the solicitation of the shareholder approval of the Funds' shareholders necessitated by the consummation of the Merger.
5. The Advisers will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Board, including a majority of the Independent Trustees, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the New Advisory Agreements caused by the Merger, the Advisers will apprise and consult with the Board to assure that the Board, including a majority of the Independent Trustees, is satisfied that the services provided will not be diminished in scope or quality.
6. The Board, including a majority of the Independent Trustees, will have approved the escrow provisions of the New Advisory Agreements in accordance with the requirements of section 15(c) of the Act prior to the termination of the Existing Advisory Agreements.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 97–23600 Filed 9–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38989; File No. SR–CHX–97–3]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendments Nos. 1, 2 and 3 by The Chicago Stock Exchange, Inc., and Order Granting Accelerated Partial Approval to the Proposed Rule Change Relating to the Trading of Nasdaq National Market Securities on the Chicago Stock Exchange

August 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 17, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change relating to quotes in the Midwest Automated Execution System (''Max system'') for Nasdaq National Market (''Nasdaq/NM'') securities. On May 14, 1997, the Exchange submitted Amendment No. 1 to the rule filing to limit the application of the proposed rule change to 150 Nasdaq/NM securities. On July 7, 1997, the Exchange submitted Amendments Nos. 2 and 3 to the rule filing clarifying which 150 Nasdaq/NM securities would be subject to a reduced minimum quotation size. The proposed is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Exchange proposes to amend Article XX, Rule 37 relating to the generation of an autoquote when a specialist's quote in a Nasdaq/NM security is exhausted due to an automatic execution. Below is the text of the proposed rule change. Proposed new text is in italics; deleted text is in brackets.

[1] 15 U.S.C. § 78s(b)(1).

Article XX

Rule 37. Guaranteed Execution System and Midwest Automated Execution System

(a) Guarantee Executions. The Exchange's Guaranteed Execution System (the BEST System) shall be available to Exchange member firms and, where applicable, to members of a participating exchange who send orders to the Floor through a linkage pursuant to Rule 39 of this Article, in all issues in the specialist system which are traded in the Dual Trading System and NASDAQ/NM Securities. System orders shall be executed pursuant to the following requirements:

1. Eligible Orders. Specialists must accept and guarantee execution on all agency orders in Dual Trading System Issues from 100 up to and including 2099 shares in accordance with this rule. Specialists must accept and execute all agency market orders or marketable limit orders in NASDAQ/NM [s]*S*ecurities from 100 up to and including 1000 shares in accordance with this rule. Specialists must accept all agency limit orders in NASDAQ/NM Securities from 100 up to and including 10,000 shares for placement in the limit order book.

2.–7. No change in text.

(b) Automated Executions. The Exchange's Midwest Automated Execution System (the Max System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

(1)–(6). No change in text.

(7) Execution of NASDAQ/NM [issues] *Securities.* In NASDAQ/NM [Issues] *Securities,* if the specialist is quoting at the NBBO at the time a MAX market or marketable limit order is received, that order shall automatically be filled at such NBBO (after the same time delays specified in paragraph 6 above for Dual Trading System issues) up to the size of the specialist's bid or offer (as the case may be). In such case, the specialist's bid or offer will be decremented by the size of the execution. In the event the specialist's bid or offer is exhausted, the system will generate a quote [1/8 point] *an increment* away from the NBBO *as determined by*