(''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on August 30, 2004 to withdraw the Issuer's Security from Listing on the Amex. The Board states that it is taking such action because the Issuer has filed for protection under Chapter 7 of the United States Bankruptcy Code, has ceased all business operations and does not have the financial resources necessary to maintain the listing and registration of the Issuer's class of Security. The Board also determined that it is in the best interest of the Issuer to withdraw the Security from listing and registration on the Amex. In addition, the Issuer states that a trustee has been assigned and is working with the secured creditors to determine if there will be either a liquidation of all the assets, of if the secured creditors will take the assets and try to move forward. The Issuer also states that there is no plan on getting any new market makers and the Issuer has no plan to continue listing and trading in the public markets at this time.

The Issuer states in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Minnesota, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(2) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before October 13, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comment

- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–31682 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–31682. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–21328 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26600; 812–12462]

Federated Investors, Inc., et al.

September 17, 2004.

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

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for exemptions from, alternatively, sections 12(d)(1)(A) and (B) of the Act, section 12(d)(1)(F)(ii) of the Act, and section 12(d)(1)(G)(i)(II) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The order would permit, alternatively, certain registered open-end management investment companies (a) to acquire shares of other registered open-end management investment companies that are within and outside the same group of investment companies, (b) to invest pursuant to section 12(d)(1)(F) of the Act but charge a sales load in excess of 1½% and (c) to invest pursuant to section 12(d)(1)(G) of the Act but invest also in securities and other financial instruments.

APPLICANTS: Federated Investors, Inc. (''Federated''); Federated Advisory Services Company, Federated Equity Management Company of Pennsylvania, Federated Global Investment Management Corp., Federated Investment Counseling, Federated Investment Management Company, Passport Research Ltd. and Passport Research II, Ltd. (together with entities controlling, controlled by or under common control with these entities, the ''Federated Advisers''); Brown Brothers Harriman & Co., CB Capital Management, Inc., Hibernia National Bank, M&I Investment Management Corp., Morgan Asset Management, Inc., Provident Investment Advisors, Inc., SouthTrust Bank, MTB Investment Advisors, Inc., WesBanco Bank, Inc., BB&T Asset Management, Inc., and Huntington Asset Advisors, Inc. (together with entities controlling, controlled by or under common control with these entities, the ''Proprietary Advisers'' and with the Federated Advisers, the ''Advisers''); Cash Trust Series, Cash Trust Series, Inc., Cash Trust Series II, Federated American Leaders Fund, Inc., Federated Adjustable Rate Securities Fund (formerly Federated ARMs Fund), Federated Core Trust, Federated Core Trust II, L.P., Federated Equity Funds, Federated Equity Income Fund, Inc., Federated Fixed Income Securities, Inc., Federated GNMA Trust, Federated Government Income Securities, Inc., Federated High Income Bond Fund, Inc., Federated High Yield Trust, Federated Income Securities Trust, Federated Income Trust, Federated Index Trust, Federated Institutional Trust, Federated Insurance Series, Federated International Series, Inc., Federated Investment Series Funds, Inc., Federated Limited Duration Government Fund, Inc. (formerly Federated Adjustable Rate U.S. Government Fund, Inc.), Federated Managed Allocation Portfolios, Federated Municipal Opportunities Fund, Inc., Federated Municipal Securities Fund, Inc., Federated Municipal Securities Income Trust, Federated Short-Term Municipal Trust, Federated Stock and Bond Fund, Inc., Federated Stock Trust, Federated Total Return Government Bond Fund (formerly Federated U.S. Government

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

Securities Fund: 5–10 Years), Federated Total Return Series, Inc., Federated U.S. Government Bond Fund, Federated U.S. Government Securities Fund: 1–3 Years, Federated U.S. Government Securities Fund: 2–5 Years, Federated World Investment Series, Inc., Intermediate Municipal Trust, Edward Jones Money Market Fund (formerly Edward D. Jones & Co. Daily Passport Cash Trust), Edward Jones Tax-Free Money Market Fund, and Money Market Obligations Trust (together with any future registered open-end investment company advised by a Federated Adviser and in the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, the ''Federated Funds''); BBH Prime Institutional Money Market Fund, Inc., BBH Common Settlement Fund II, Inc., BBH Fund, Inc., BBH Money Market Portfolio, BBH Trust, Golden Oak Family of Funds, Hibernia Funds, Marshall Funds, Inc., Regions Morgan Keenan Select Funds (formerly Regions Funds), The Provident Riverfront Funds, SouthTrust Funds, MTB Group of Funds (formerly Vision Group of Funds), WesMark Funds, BB&T Funds, and The Huntington Funds (together with any future registered open-end investment company advised by a Proprietary Adviser and in the same group of investment companies, the ''Proprietary Funds,'' and together with the Federated Funds, the ''Funds'').[1]

FILING DATE: The application was filed on March 2, 2001 and amended on June 13, 2001 and on September 10, 2004.

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 October 12, 2004, 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Victor R. Siclari, Esq., Reed Smith LLP, Federated Investors Tower, 1001 Liberty Avenue—12th Floor, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Michael W. Mundt, Senior Special Counsel, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0101, (202) 942–8090.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. Certain of the Funds are comprised of separate series (each series, also a ''Fund''). Each Adviser is registered under the Investment Advisers Act of 1940.[2]

2. Applicants request relief to permit (a) certain Funds (''Investing Funds'') to acquire shares of registered open-end management investment companies that are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Investing Funds (''Same Group Funds'') and shares of registered open-end management investment companies that are not part of the same group of investment companies as the Investing Funds (''Other Group Funds'') in excess of the limits set forth in section 12(d)(1)(A) of the Act, and the Same Group Funds and Other Group Funds to sell their shares to the Investing Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act,[3] (b) Investing Funds that invest in Other Group Funds pursuant to section 12(d)(1)(F) of the Act to charge a sales load in excess of 1½% and (c) Investing Funds that invest in Same Group Funds pursuant to section 12(d)(1)(G) of the Act also to invest, to the extent described in the relevant prospectus, in, among other things, domestic and foreign common and preferred stock, debt obligations, futures transactions, options on the foregoing and other instruments, including money market instruments (''Direct Investments'').[4] Applicants also seek relief, to the extent necessary, to permit Same Group Funds and Other Group Funds that become affiliated persons of an Investing Fund to sell shares to, and redeem shares from, the Investing Fund.[5]

3. Applicants state that each Investing Fund will provide a consolidated and efficient means through which investors will have access to a comprehensive investment vehicle through which advice in several types of investment securities will be available. Applicants assert that, in the absence of such a vehicle, investors would have to evaluate and acquire shares of each Same Group Fund and Other Group Fund separately in light of their investment goals.

Applicants' Legal Analysis

A. Sections 12(d)(1)(A) and (B) of the Act

1. Section 12(d)(1)(A) prohibits a registered investment company from acquiring shares of another registered investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company or, together with the securities of other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) prohibits a

[1] All Funds that currently intend to rely on the order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application. Applicants intend to amend the order periodically to enable future Proprietary Advisers that are not controlling, controlled by, or under common control with any of the current applicant Proprietary Advisers, and the Proprietary Funds advised by any of these Proprietary Advisers, to rely on the requested relief. Any such future applications to amend the order will be filed by Federated, the new Proprietary Adviser and the new Proprietary Fund(s).

[2] Three of the Proprietary Advisers are registered, and render investment advisory services, through a separately identifiable department or division: Hibernia National Bank is registered, and rends investment advisory services, through Hibernia Asset Management; SouthTrust Bank is registered, and renders investment advisory services, through SouthTrust Investment Advisers; WesBanco Bank, Inc. is registered, and renders investment advisory services, through WesBanco Investment Department.

[3] The following Funds currently intend to serve as Investing Funds: Federated American Leaders Fund, Inc., Federated Adjustable Rate Securities Fund (formerly Federated ARMs Fund), Federated Equity Funds, Federated Equity Income Fund, Inc., Federated Fixed Income Securities, Inc., Federated Government Income Securities, Inc., Federated High Income Bond Fund, Inc., Federated High Yield Trust, Federated Income Securities Trust, Federated Income Trust, Federated International Series, Inc., Federated Investment Series Funds, Inc., Federated Limited Duration Government Fund, Inc. (formerly Federated Adjustable Rate U.S. Government Fund, Inc.), Federated Managed Allocation Portfolios, Federated Stock and Bond Fund, Inc., Federated Stock Trust, Federated Total Return Government Bond Fund (formerly Federated U.S. Government Securities Fund: 5–10 Years), Federated Total Return Series, Inc. and Federated World Investment Series, Inc.; and certain portfolios of BB&T Funds, MTB Group of Funds (formerly Vision Group of Funds), The Huntington Funds and Marshall Funds, Inc.

[4] Direct Investments will not include shares of any registered investment companies that are not in the same group of investment companies as the Investing Fund.

[5] Applicants state that the relief requested in the application is not intended to permit Investing Funds to purchase shares of Same Group Funds that are money market funds as part of a cash management program.

registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's outstanding voting stock or more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security or transaction from any provisions of section 12(d)(1), if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit Investing Funds to acquire shares of Same Group Funds and Other Group Funds, and Same Group Funds and Other Group Funds to sell their shares to Investing Funds, beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will be structured to mitigate the potential abuses from which sections 12(d)(1)(A) and (B) are designed to protect investors, such as undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by an Investing Fund or its affiliates over any Same Group Fund or Other Group Fund. To limit the influence that an Investing Fund may have over an Other Group Fund, applicants propose a condition prohibiting (a)(i) the Adviser of an Investing Fund, (ii) any person controlling, controlled by or under common control with the Adviser and (iii) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act advised or sponsored by the Adviser or any person controlling, controlled by or under common control with the Adviser (''Adviser Group''), and (b)(i) any investment adviser within the meaning of section 2(a)(20)(B) of the Act (''Subadviser'') of an Investing Fund, (ii) any person controlling, controlled by or under common control with the Subadviser and (iii) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (''Subadviser Group''), from controlling (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants also propose conditions A.2–A.7, stated below, to preclude an Investing Fund and its affiliated entities from taking advantage of an Other Group Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis. Condition A.2 precludes an Investing Fund and its Adviser, any Subadviser, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an ''Investing Fund Affiliate'') from causing any existing or potential investment by the Investing Fund in an Other Group Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Other Group Fund or its investment adviser(s), promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an ''Other Group Fund Affiliate''). Condition A.5 precludes an Investing Fund and Investing Fund Affiliates (except to the extent they are acting in their capacity as an investment adviser to an Other Group Fund) from causing an Other Group Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, member of an advisory board, Adviser, Subadviser or employee of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Adviser, Subadviser or employee is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Other Group Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. In addition, as an assurance that an Other Group Fund understands the implications of an investment by an Investing Fund operating in reliance on the request from sections 12(d)(1)(A) and (B), prior to any investment by the Investing Fund in the Other Group Fund in excess of the limit set forth in section 12(d)(1)(A)(i), condition A.8 requires the Investing Fund and the Other Group Fund to execute an agreement stating, without limitation, that their boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that the Other Group Fund has the right to reject an investment from an Investing Fund.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, prior to reliance on the order and subsequently in connection with the approval of any investment advisory contract under section 15 of the Act, the board of directors or trustees of an Investing Fund (''Board''), including a majority of the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), will find that any investment advisory fees charged to the Investing Fund under its investment advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided under the investment advisory contract(s) of any Same Group Fund and Other Group Fund, unless (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or Other Group Fund or (b) advisory fees are charged only at the Investing Fund level, or at the Same Group Fund or Other Group Fund level. Applicants further state, with respect to investments in an Other Group Fund outside the limits of sections 12(d)(1)(A) and (B), the Adviser to an Investing Fund will waive fees otherwise payable to the Adviser by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by the Other Group Fund under rule 12b–1 under the Act (''12b–1 Fees'')) received from the Other Group Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person, in connection with the investment by the Investing Fund in the Other Group Fund. Applicants also state that any Subadviser to an Investing Fund will waive fees otherwise payable to the Subadviser by the Investing Fund in an amount at least equal to any compensation received from the Other Group Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person, in connection with the investment by the Investing Fund in the Other Group Fund made at the direction of the Subadviser. Applicants agree that the benefit of any

such waiver by a Subadviser will be passed through to the Investing Fund.

8. Applicants represent that the aggregate sales charges and/or service fees (as defined in the Conduct Rules of the National Association of Securities Dealers (''NASD Conduct Rules'')) charged with respect to shares of any Investing Fund will not exceed the limits applicable to funds of funds set forth in rule 2830 of the NASD Conduct Rules (''Rule 2830''). Moreover, the prospectus and sales literature of an Investing Fund that operates in reliance on the relief requested from sections 12(d)(1)(A) and (B) will contain concise, ''plain English'' disclosure tailored to the particular document designed to inform investors of the unique characteristics of the fund of funds structure, including but not limited to, its expense structure and the additional expenses of investing in Same Group Funds and Other Group Funds.

9. Applicants contend that the proposed arrangement will not create an overly complex fund structure. Applicants note that Same Group Funds and Other Group Funds will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Same Group Fund or Other Group Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1)) or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Same Group Fund or Other Group Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes or (ii) engage in interfund borrowing and lending transactions.

B. Section 12(d)(1)(F) of the Act

1. Section 12(d)(1)(F) provides that section 12(d)(1) will not apply to the acquisition by a registered investment company of the securities of an investment company if, among other things, the acquiring company and its affiliates immediately after the purchase own no more than 3% of the acquired company's total outstanding stock and the acquiring company does not charge a sales load of more than 1½% on sales of its shares. Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(F), except for the sales load limit of 1½%.

2. Applicants seek an exemption under section 12(d)(1)(J) exempting them from section 12(d)(1)(F)(ii) to permit Investing Funds that invest in Other Group Funds pursuant to section 12(d)(1)(F) to impose a sales load in excess of 1½%. Applicants agree, as a condition to any order granting the relief, that any sales charges and/or service fees (as defined in Rule 2830) charged with respect to shares of an Investing Fund will not exceed the limits applicable to funds of funds set forth in Rule 2830.

C. Section 12(d)(1)(G) of the Act

1. Section 12(d)(1)(G) provides that section 12(d)(1) will not apply to securities of a registered open-end investment company purchased by another registered open-end investment company, if (a) the acquiring company and the acquired company are part of the same group of investment companies, (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper, (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are limited in certain respects and (d) the acquired company has a policy that generally prohibits it from acquiring securities of registered investment companies in reliance on section 12(d)(1)(F) or (G). Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that an Investing Fund will invest in Direct Investments in addition to Same Group Funds.

2. Applicants request an order under section 12(d)(1)(J) exempting them from section 12(d)(1)(G)(i)(II) to permit Investing Funds that invest pursuant to section 12(d)(1)(G) to make Direct Investments. Applicants assert that permitting Investing Funds to invest in Direct Investments, as described in the application, would not raise the concerns underlying section 12(d)(1)(G).

D. Section 17(a) of the Act

1. Section 17(a) generally prohibits purchases and sales of securities, on a principal basis, between a registered investment company and any affiliated person or promoter of, or principal underwriter for, the company, and affiliated persons of such persons. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, among other things, any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the other's outstanding voting securities; any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; any person directly or indirectly controlling, controlled by or under common control with the other person; and any investment adviser to an investment company.

2. Section 17(b) authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction, including the consideration to be paid and received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) permits the Commission to exempt any person or transaction, or any class or classes of persons or transactions from any provisions of the Act, if 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.

3. Applicants state that a Same Group Fund or an Other Group Fund might be deemed to be an affiliated person of an Investing Fund if the Investing Fund acquires 5% or more of the Same Group Fund's or Other Group Fund's outstanding voting securities. Applicants also state that since certain of the Investing Funds, Same Group Funds and Other Group Funds may be advised, subadvised, administered and/or distributed by Federated or an entity controlling, controlled by or under common control with Federated, or share common officers and/or directors, they may be deemed to be under common control and, therefore, affiliated persons of each other. Accordingly, section 17(a) could prevent a Same Group Fund or an Other Group Fund from selling shares to, and redeeming shares from, an Investing Fund.

4. Applicants seek an exemption under sections 6(c) and 17(b) to allow the proposed transactions. Applicants state that the transactions satisfy the standards for relief under sections 6(c) and 17(b). Specifically, applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants represent that the proposed transactions will be consistent with the policies of each Investing Fund, Same Group Fund and

Other Group Fund, and with the general purposes of the Act. In addition, applicants note that the consideration paid in sales and redemptions permitted under the requested order of shares of Same Group Funds and Other Group Funds will be based on the net asset values of, respectively, the Same Group Funds and Other Group Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. With respect to Investing Funds that purchase shares of Same Group Funds and Other Group Funds outside the limit set forth in sections 12(d)(1)(A) and (B) and are not relying on section 12(d)(1)(F) or (G), or the exemptions therefrom requested in the application:

1. The members of the Adviser Group will not control (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act. The members of the Subadviser Group will not control (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Other Group Fund, the Adviser Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of an Other Group Fund, it will vote its shares of the Other Group Fund in the same proportion as the vote of all other holders of the Other Group Fund's shares. This condition shall not apply to the Subadviser Group with respect to an Other Group Fund for which the Subadviser or a person controlling, controlled by or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in shares of an Other Group Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Other Group Fund or an Other Group Fund Affiliate.

3. The Board of the Investing Fund, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that the Adviser and any Subadviser to the Investing Fund are conducting the investment program of the Investing Fund without taking into account any consideration received by the Investing Fund or an Investing Fund Affiliate from an Other Group Fund or an Other Group Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the securities of an Other Group Fund exceeds the limit of section 12(d)(1)(A)(i), the board of directors or trustees of the Other Group Fund, including a majority of the Independent Trustees, will determine that any consideration paid by the Other Group Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Other Group Fund; (b) is within the range of consideration that the Other Group Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Other Group Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Other Group Fund) will cause an Other Group Fund to purchase a security in any Affiliated Underwriting.

6. The board of directors or trustees of an Other Group Fund, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Other Group Fund in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Other Group Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by an Investing Fund in shares of the Other Group Fund. The board should consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Other Group Fund, (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index, and (c) whether the amount of securities purchased by the Other Group Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Other Group Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Other Group Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase and the information or materials upon which the board's determinations were made.

8. Prior to its investment in shares of an Other Group Fund in excess of the limit set forth in section 12(d)(1)(A)(i), an Investing Fund and the Other Group Fund will execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Other Group Fund in excess of the limit set forth in section 12(d)(1)(A)(i), an Investing Fund will notify the Other Group Fund of the investment. At such time the Investing Fund will also transmit to the Other Group Fund a list of names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Other Group Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Other Group Fund and the Investing Fund will maintain and preserve a copy of the order, the agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Prior to reliance on the requested order, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory

fees, if any, charged under an Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Same Group Fund's and Other Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or Other Group Fund or (b) advisory fees are only charged at either the Investing Fund level, the Other Group Fund level or the Same Group Fund level. In addition, in connection with the approval of any investment advisory contract pursuant to section 15 of the Act subsequent to such initial determination, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under the Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Same Group Fund's and Other Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or Other Group Fund or (b) advisory fees are only charged at either the Investing Fund level, the Other Group Fund level or the Same Group Fund level.

10. Each Adviser will waive fees otherwise payable to the Adviser by an Investing Fund in an amount at least equal to any compensation (including 12b–1 Fees) received from an Other Group Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Other Group Fund, in connection with the investment by the Investing Fund in the Other Group Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by an Investing Fund in an amount at least equal to any compensation received from an Other Group Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by the Other Group Fund, in connection with the investment by the Investing Fund in the Other Group Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of any waiver will be passed through to the Investing Fund.

11. Any sales charges and/or service fees (as defined in Rule 2830) charged with respect to shares of an Investing Fund will not exceed the limits applicable to funds of funds set forth in Rule 2830.

12. No Same Group Fund or Other Group Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Same Group Fund or Other Group Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1)), or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Same Group Fund or Other Group Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

B. With respect to Investing Funds that purchase shares of Other Group Funds in compliance with section 12(d)(1)(F), except that the Investing Fund may charge a sales load in excess of the limitation in section 12(d)(1)(F)(ii):

1. The Investing Funds will comply with section 12(d)(1)(F) in all respects, except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges and/or service fees (as defined in Rule 2830) charged with respect to shares of an Investing Fund will not exceed the limits applicable to funds of funds set forth in Rule 2830.

3. Prior to reliance on the requested order, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under an Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Other Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Other Group Fund or (b) advisory fees are only charged at either the Investing Fund level or Other Group Fund level. In addition, in connection with the approval of any investment advisory contract pursuant to section 15 of the Act subsequent to such initial determination, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under the Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Other Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Other Group Fund or (b) advisory fees are only charged at either the Investing Fund level or Other Group Fund level.

4. No Other Group Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in Section 12(d)(1)(A), except to the extent that such Other Group Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1)), or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Other Group Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

C. With respect to Investing Funds that purchase shares of Same Group Funds in compliance with section 12(d)(1)(G), except that the Investing Fund will also invest in Direct Investments:

1. The Investing Fund will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts Investing Funds from investing in Direct Investments as described in the application.

2. Prior to reliance on the requested order, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under an Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Same Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or (b) advisory fees are only charged at either the Investing Fund level or Same Group Fund level. In addition, in connection with the approval of any investment advisory contract pursuant to section 15 of the Act subsequent to such initial determination, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under the Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Same Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or (b) advisory fees are only charged at either the Investing Fund level or Same Group Fund level.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2347 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50394; File No. SR–Amex–2004–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the American Stock Exchange LLC Relating to the Handling of Linkage Orders

September 16, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to 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. On September 10, 2004, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Amex proposes to amend its rules to conform to Joint Amendment No. 13 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

* * * * *

Rule 940. Options Intermarket Linkage

(a) (No Change).

(b) Definitions—The following terms shall have the meaning specified in this Rule solely for the purpose of this Section 4:

(1) through (6) (No Change).

(7) ''Firm Customer Quote Size'' with respect to a P/A Order means the lesser of: (a) the number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. The number shall be at least 10 *unless the receiving Participant Exchange is disseminating a quotation of less than 10 contracts, in which case this number may equal such quotation size.*

(8) ''Firm Principal Quote Size'' means the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be at least 10, *however if the Participant Exchange is disseminating a quotation size of less than 10 contracts, this number may equal such quotation size.*

(9) through (20) (No Change).

* * * * *

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 had 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.

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

1. Purpose

The purpose of this filing is to conform Amex's Linkage rules to proposed Joint Amendment No. 13 to the Linkage Plan, which would accommodate ''natural size'' of quotations.[4] Specifically, the Linkage Plan and Amex rules currently require that the Exchange be firm for both Principal Acting as Agent (''P/A'') and Principal Orders for at least 10 contracts (the ''10-up'' requirement). The proposed rule change would permit

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Jeffery P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated September 9, 2004 (''Amendment No. 1''). In Amendment No. 1, the Amex amended the proposed rule text to reflect a technical change.

[4] The participants in the Linkage Plan (''Participants'') have filed an amendment to the Linkage Plan to change the definitions of ''Firm Customer Quote Size'' (''FCQS'') and ''Firm Principal Quote Size'' (''FPQS'') (Joint Amendment No. 13). *See* Securities Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050 (August 26, 2004) (File No. 4–429).