

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-18303 Filed 7-18-96; 8:45 am]

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[Rel. No. IC-22068; No. 812-10026]

EQ Financial Consultants, Inc., et al.

July 12, 1996.

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

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

APPLICANTS: EQ Financial Consultants, Inc. ("EQ Financial") and The Equitable Life Assurance Society of the United States ("Equitable").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 9(c) granting exemption from the provisions of Section 9(a).

SUMMARY OF APPLICATION: Applicants seek an order of the Commission pursuant to Section 9(c) of the 1940 Act to enable EQ Financial, Equitable and any subsidiary of Equitable affected in the future (collectively, "The Equitable Subsidiaries") to employ Paul Donnelly ("Donnelly"), who is subject to a securities related injunction described below.

FILING DATE: The application was filed on March 4, 1996, and amended on July 12, 1996.

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 Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 6, 1996, and must 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 Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549. Applicants, c/o Marcia L. MacHarg, Debevoise & Plimpton, 555 Thirteenth Street, NW., Washington, DC. 20004.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, Office of Insurance Products (Division

of Investment Management), at (202) 942-0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. EQ Financial (formerly named Equico Securities, Inc.) is a corporation all of the outstanding shares of which are owned by Equitable. EQ Financial is a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") and a principal underwriter for various entities registered under the 1940 Act and may in the future be investment adviser or depositor for entities that are registered under the 1940 Act.

2. Equitable is a New York stock life insurance company, a broker-dealer registered under the Exchange Act and an investment adviser registered under the Investment Advisers Act of 1940. Equitable is the depositor for two separate accounts that are registered under the 1940 Act and may in the future be investment adviser or principal underwriter for entities that are registered under the 1940 Act.

3. The Equitable Subsidiaries are also, or may in the future be, investment advisers, principal underwriters and/or depositors for entities that are registered under the 1940 Act.

4. In 1985, Donnelly was permanently enjoined by consent from engaging in certain acts or practices. The injunction resulted from a complaint filed by the Commission alleging violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, Sections 10(b), 12(g), 13(a), 17A(c) and 17A(d) of the Exchange Act and Rules 10b-5, 12b-20, 13a-11, 13a-13, 17Ad-4, 17Ad-6, and 17Ad-7 thereunder. *SEC v. Netelkos*, Litigation Release No. 10918 (Oct. 30, 1985). The Commission's complaint alleged, among other things, that, from June 1982 to January 1984, Donnelly and others caused Falcon Sciences, Inc. ("Falcon") to issue unregistered, unauthorized and counterfeit stock, that Donnelly knowingly instructed Falcon's public accountant to report certain contracts between Falcon and other companies as arm's length agreements when they were not and that Donnelly assisted in the preparation of various documents Falcon filed with the Commission, including annual and quarterly reports, that he knew contained untrue and misleading statements of material facts.

5. Donnelly became a life insurance agent for Equitable in 1984. For several months before the entry of the

injunction, Donnelly was also a registered representative of EQ Financial and of Equitable. After the entry of the injunction, Donnelly ceased being a registered representative of EQ Financial and of Equitable. He continued to be a life insurance agent for Equitable and was acting in that capacity as of the date the application was filed.

6. EQ Financial and Equitable now propose to employ Donnelly as a registered representative. They are aware that to do so without an order of the Commission under Section 9(c) would disqualify them from acting in certain capacities to entities registered under the 1940 Act. In this regard, EQ Financial and Equitable note that they have extensive compliance registration procedures to ensure that they do not employ persons who are subject to a statutory disqualification under Section 9(a) of the 1940 Act until the Section 9 issues are resolved. Applicants also note that, as an agent for Equitable, Donnelly is not an employee of Equitable and thus Equitable is not currently disqualified from acting as a depositor for separate accounts.

Applicants' Legal Analysis

1. Section 9(a) of the 1940 Act provides, in relevant part, that:

It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered until investment trust, or registered face amount certificate company.

* * * * *

(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee or any registered investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or

(3) a company any affiliated person of which is ineligible, by reason of paragraph * * * (2), to serve or act in the foregoing capacities.

2. Section 9(c) of the 1940 Act provides that:

Any person who is ineligible, by reason of subsection (a), to serve or act in the capacities enumerated in that subsection,

may file with the Commission an application for an exemption from the provisions of that subsection. The Commission shall by order grant such application, either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of subsection (a), as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

3. If Donnelly becomes an employee of EQ Financial, Equitable and/or any of The Equitable Subsidiaries, the employer will become subject to the disqualification provisions of Section 9(a) because Donnelly will be an affiliated person of the employer.

4. Applicants submit that the statutory standards set forth above will be satisfied with respect to the relief requested under Section 9(c) of the 1940 Act. In this connection, Applicants believe that the application of the prohibitions of Section 9(a) to Applicants and The Equitable Subsidiaries because of the employment of Donnelly would be unduly and disproportionately severe. Applicants also assert that their conduct and the conduct of the Equitable Subsidiaries has been such as to make it not against the public interest or the protection of investors to grant the requested relief.

5. Donnelly will not serve in any capacity related in any way to the provision of investment advice to any registered investment company or to acting as principal underwriter to any registered open-end investment company or registered face-amount certificate company or as principal underwriter or depositor to any registered unit investment trust.¹ Donnelly will not be a corporate officer of EQ Financial, Equitable or any of The Equitable Subsidiaries or serve in a policy-making role or participate in the management or administrative activities of EQ Financial, Equitable or any of The Equitable Subsidiaries relating to registered investment companies.

6. Applicants state that the conduct complained of by the Commission on the part of Donnelly did not relate to investment company activities. The injunction against Donnelly was entered more than 10 years ago and the events to which it related occurred more than 12 years ago. Applicants state that Donnelly has not been subject to similar

action, or any action relating to his conduct as an agent of Equitable, nor to the best knowledge of Applicants after reasonable inquiry have any complaints been filed against Donnelly with the Commission, any self-regulatory organization, any state securities commission or any insurance regulatory authority since the date of the injunction.

7. Applicants state that Donnelly has informed Applicants that he complied with the disgorgement and payment obligations imposed on him under the injunction.

8. Applicants assert that the balance of fairness requires that the requested relief be granted. If the exemption is not granted, EQ Financial, Equitable and The Equitable Subsidiaries will not employ Donnelly because to do so would subject them to a Section 9(a) bar on investment company activities. Consequently, Donnelly would continue to be unable to offer his clients the full range of financial services available to be provided by a registered representative of EQ Financial and Equitable. Applicants believe this would unduly limit his business activities.

9. Finally, Applicants assert that the relief they request is virtually identical in all material respects to relief the Commission has granted on numerous previous occasions. See e.g. Gruntal & Co., Incorporated, Inv. Co. Act Rel. No. 19793 (Oct. 18, 1993).

Applicants' Condition

Applicants agree that the Commission's order granting the requested relief shall be subject to the following condition:

EQ Financial, Equitable and The Equitable Subsidiaries will not employ Donnelly in any capacity related directly to the provision of investment advisory services for a registered investment company, or acting as a principal underwriter for a registered open-end investment company or registered face-amount certificate company, or as a principal underwriter or depositor for a registered unit investment trust.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-18302 Filed 7-18-96; 8:45 am]

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[Rel. No. IC-22069; International Series Release No. 1004; File No. 812-10054]

The New South Africa Fund Inc.

July 12, 1996.

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

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

APPLICANT: The New South Africa Fund Inc.

RELEVANT ACT SECTION: Section 10(f).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to purchase South African securities from an underwriting syndicate when applicant's investment adviser is an affiliated person of a principal underwriter in the syndicate.

FILING DATE: The application was filed on March 22, 1996 and amended on July 1, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 6, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, c/o Bear Stearns Funds Management Inc. 245 Park Avenue, New York, N.Y. 10167.

FOR FURTHER INFORMATION CONTRACT: Mary T. Geffroy, Staff Attorney, at (202) 942-0553, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENT INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified, closed-end management investment company organized as a Maryland corporation. Applicant's investment objective is long-term appreciation

¹ Applicants expect that Donnelly will be involved to some degree in the retail sale of investment company securities, including variable insurance products funded by separate accounts organized as unit investment trusts.