

the Secretary and Director of Public Affairs. Effective August 19, 1997.

*Department of the Treasury*

Senior Advisor to the Assistant Secretary for Management and CFO. Effective August 12, 1997.

Deputy Director of Scheduling to the Director, Scheduling Affairs. Effective August 13, 1997.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective August 21, 1997.

*Environmental Protection Agency*

Special Assistant to the Chief of Staff. Effective August 20, 1997.

*Farm Credit Administration*

Special Assistant to the Member. Effective August 6, 1997.

*National Aeronautics and Space Administration*

Writer-Editor to the Associate Administrator for Public Affairs. Effective August 22, 1997.

*Office of Management and Budget*

Confidential Assistant to the Associate Director, National Security and International Affairs. Effective August 22, 1997.

*Office of National Drug Control Policy*

Events Manager to the Director. Effective August 14, 1997.

*Securities and Exchange Commission*

Confidential Assistant to the Commissioner. Effective August 28, 1997.

*Small Business Administration*

Deputy Associate Administrator to the Associate Administrator for Communications and Public Liaison. Effective August 14, 1997.

Senior Advisor to the Administrator. Effective August 28, 1997.

*United States Information Agency*

White House Liaison to the Chief of Staff, Office of the Director. Effective August 7, 1997.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954-1958 comp., P. 218. Office of Personnel Management.

**Janice R. Lachance,**

*Acting Director.*

[FR Doc. 97-25950 Filed 9-30-97; 8:45 am]

BILLING CODE 6325-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. IC-22832; 812-10650]

**Harbor Fund and Harbor Capital Advisors, Inc.; Notice of Application**

September 25, 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 the provisions of section 15(a) of the Act and rule 18f-2 under the Act.

**SUMMARY OF APPLICATION:** Applicants Harbor Fund (the "Trust") and Harbor Capital Advisors, Inc. (the "Adviser") request an order to permit the Adviser to enter into and materially amend contracts with the Trust's subadvisers without shareholder approval.

**FILING DATES:** The application was filed on May 9, 1997, and amended on August 29, 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 October 20, 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, N.W., Washington, D.C. 20549. Applicants, One SeaGate, Toledo, Ohio 43666.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. 202-942-8090).

**Applicants' Representations**

1. The Trust is organized as a Delaware business trust and is

registered under the Act as an open-end management investment company. The Trust is comprised of nine series ("Funds"), each of which has its own investment objectives and policies.<sup>1</sup> Each Fund offers only one class of shares, which are distributed to the public without a sales charge or distribution or service fees. The Adviser, a Delaware corporation, is registered under the Investment Advisers Act of 1940 (the "Advisers Act").

2. The Trust, on behalf of each Fund, has entered into separate investment advisory agreements ("Agreements") with the Adviser. Under the terms of these Agreements, the Adviser provides each Fund with investment research, advice and supervision, and furnishes continuously an investment program for each Fund consistent with the investment objectives and policies of the Fund. The Adviser also administers each Fund's business affairs, furnishes each Fund with office facilities and is responsible for clerical, recordkeeping, and bookkeeping services and for the financial and accounting records required to be maintained by each Fund (other than those maintained by the Trust's custodian and shareholder servicing agent). The Agreements specifically permit the Adviser to enter into investment subadvisory agreements ("Subadvisory Agreements") with portfolio managers ("Portfolio Managers") to whom the Adviser delegates its responsibility for providing investment advice and making investment decisions for the particular Fund.

3. Since 1987, the Adviser has selected Portfolio Managers to make investment decisions for the Funds, and has represented itself as an investment adviser whose strength, experience, and expertise lies in its ability to evaluate, select, and supervise those Portfolio Managers who can add the most value to a shareholder's investment in the Trust. Currently, all nine Funds have contracted for subadvisory services with Portfolio Managers selected by the Adviser.<sup>2</sup> In addition to selecting Portfolio Managers, the Adviser provides management oversight services to the Funds, which include, but are not limited to, supervising the Portfolio

<sup>1</sup> Applicants also request relief with respect to any series of the Trust that may be created in the future and all subsequently registered open-end investment companies that in the future are advised by the Adviser, operate in substantially the same manner as the Funds with respect to the Adviser's responsibility to select, evaluate and supervise portfolio managers, and comply with the conditions to the requested order.

<sup>2</sup> As of the date of the application, only one Fund has more than one Portfolio Manager.

Managers' compliance with federal regulations, including those imposed under the Act; extensive evaluation of the Portfolio Managers' investment performance; analyzing the composition of the investment portfolios of each Fund and preparing reports for the Trustees; preparing presentations to shareholders which analyze each Fund's overall investment program and performance; and intensive and continual review of its Portfolio Manager selection process. The Adviser retains the ultimate responsibility to both oversee the Portfolio Managers which it selects and to recommend to the Trust's board of trustees (the "Board of Trustees") their hiring, termination, and replacement.

4. Under the terms of the Subadvisory Agreements, the Portfolio Managers have authority to provide the respective Funds with advice concerning the investment management of that portion of the Fund's assets allocated to the Portfolio Manager by the Board of Trustees. The Portfolio Managers determine what securities will be purchased and sold. The Portfolio Managers also perform certain recordkeeping and compliance functions required by the Act and the Advisers Act.

5. For the Adviser's advisory and administrative services, each fund pays the Adviser a monthly fee at an annual rate based on the average daily net assets of that fund. For their subadvisory services to the Funds, the Adviser pays each Portfolio Manager a monthly fee at an annual rate based on the average daily net assets of the Fund. Subadvisory fees paid by the Adviser to a Portfolio Manager of a Fund with more than one Portfolio Manager depend both on the fee rate negotiated with the Adviser and on the percentage of the Fund's assets allocated to the Portfolio Manager by the Adviser.

6. Applicants request an exemption from section 15(a) of the Act and rule 18f-2 under the Act to permit the Adviser, subject to the approval of the Trust's Board of Trustees, to enter into and materially amend Subadvisory Agreements with Portfolio Managers without obtaining shareholder approval. The Adviser will obtain shareholder approval of a Subadvisory Agreement with a Portfolio Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Adviser, other than by reason of serving as Portfolio Manager to one or more of the Funds.

#### **Applicants' Legal Analysis**

1. Section 15(a) of the Act makes it unlawful for any person to act as an

investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f-2 provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act 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 request an order under section 6(c) to permit the Adviser, subject to the approval of the Trust's Board of Trustees, to enter into and materially amend Subadvisory Agreements with Portfolio Managers without obtaining shareholder approval.

3. Applicants assert that, from the perspective of the investor, the role of the Portfolio Managers with respect to the Trust is substantially equivalent to the role of the individual portfolio managers employed by an adviser to an investment company. In both cases, the portfolio managers are concerned principally with selection of portfolio investments in accordance with the fund's investment objectives and policies and have no significant supervisory, management or administrative responsibilities with respect to the fund. Applicants also assert that investors look to the Adviser when they have questions or concerns about the Trust's management or about their Fund's investment performance. Applicants state that investors expect the Adviser and the Board of Trustees to select the Portfolio Managers for the Fund and, for multiple manager Funds, rely upon the Adviser's expertise in selecting specific Portfolio Managers for segments of the Fund's assets in accordance with a Portfolio Manager's experience and expertise.

4. Applicants contend that the requested relief will allow each Fund to operate more efficiently. Without the delay inherent in calling and holding shareholder meetings and without the associated costs, the Funds will be able to act more quickly and with less expense to replace Portfolio Managers when the Adviser and the Board of Trustees feel that change would benefit a Fund.

5. Applicants believe that the requested relief is consistent with the protection of investors in light of the management structure of the Trust, as

well as the Adviser's significant experience and expertise in selecting Portfolio Managers and the shareholder's expectation that the Adviser will utilize that expertise and select the most able Portfolio Managers.

6. Applicants also believe that shareholders of the Funds will be provided with adequate information about the Portfolio Managers. The Trust's prospectus and statement of additional information will contain all required information regarding each Portfolio Manager. The Trust will furnish to shareholders, within 90 days of the date that a Portfolio Manager is appointed, relevant information that would have been provided in a proxy statement.

#### **Applicants' Conditions**

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

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of its outstanding voting securities, as defined in the Act, or, in the case of a new Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition number 2 below, by the sole initial shareholder(s) before offering shares of that Fund to the public.

2. The Trust will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to this application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility to oversee Portfolio Managers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Trust's Board of Trustees will be persons each of whom is not an "interested person" of the Trust as defined in section 2(a)(19) of the Act ("Independent Trustees"), and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Portfolio Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Adviser or the Funds, other than by reason of serving as Portfolio Manager to one or more of the Funds ("Affiliated Portfolio Manager"), without that agreement, including the compensation to be paid thereunder,

being approved by the shareholders of the applicable Fund.

5. When a Portfolio Manager change is proposed for a Fund with an Affiliated Portfolio Manager, the Trust's Trustees, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Portfolio Manager derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Portfolio Manager, shareholders will be furnished relevant information about a new Portfolio Manager that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Portfolio Manager. The Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a Portfolio Manager, an informal information statement meeting the requirements of Regulation 14C and Schedule 14C of the Securities Exchange Act of 1934 ("Exchange Act"). The information statement will also meet the relevant requirements of Schedule 14A of the Exchange Act.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's portfolio, and subject to review and approval by the Trustees, will: (i) Set the Fund's overall investment strategies; (ii) select Portfolio Managers; (iii) when appropriate, recommend to the Fund's Board of Trustees the allocation and reallocation of a Fund's assets among multiple Portfolio Managers; (iv) monitor and evaluate the performance of Portfolio Managers; and (v) ensure that the Portfolio Managers comply with the Board's investment objectives, policies, and restrictions.

8. No Trustee or officer of the Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that Trustee, director or officer) any interest in a Portfolio Manager except for (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1 percent of the outstanding securities of any class or debt or equity of a publicly-traded company that is either a Portfolio Manager or an entity that controls, is controlled by or is under common control with a Portfolio Manager.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-25990 Filed 9-30-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39129; File No. SR-NYSE-97-16]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to NYSE Rule 79A

September 25, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 28, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The proposed rule change consists of amendments to Exchange rule 79A to conform with requirements for display of customer limit orders as contained in Rule 11Ac1-4 under the Exchange Act. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

\* \* \* \* \*

#### NYSE Rule 79A

##### *Miscellaneous Requirements on Stock and Bond Market Procedures*

.10 Request to make better bid or offer. When any [member] *Floor broker* does not bid or offer at the limit of an order which is better than the currently quoted price in the security and is requested by his principal to bid or offer at such limit, he shall do so.

.15 *With respect to limit orders received by specialists, each specialist shall publish immediately (i.e., as soon*

*as practicable, which under normal market conditions means no later than 30 seconds from time of receipt) a bid or offer that reflects:*

(i) *the price and full size of each customer limit order that is at a price that would improve the specialist's bid or offer in such security; and*  
(ii) *the full size of each limit order that*

(A) *is priced equal to the specialist's bid or offer for such security;*

(B) *is priced equal to the national best bid or offer; and*

(C) *represents more than a de minimis change (i.e., more than 10 percent) in relation to the size associated with the Exchange's bid or offer.*

*The requirements with respect to specialists' display of limit orders shall not apply to any customer limit order that is:*

(1) *executed upon receipt of the order;*

(2) *placed by a customer who expressly requests, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed;*

(3) *an odd-lot order;*

(4) *delivered immediately upon receipt to an exchange or association-sponsored system or an electronic communications network that complies with the requirements of Securities and Exchange Commission Rule 11Ac1-1 (c)(5)(ii) under the Securities Exchange Act with respect to that order;*

(5) *delivered immediately upon receipt to another exchange member or over-the-counter market maker that complies with the requirements of Securities and Exchange Commission Rule 11Ac1-4 under the Securities Exchange Act with respect to that order;*

(6) *an "all or none" order;*

(7) *a limit order to buy at a price significantly above the current offer or a limit order to sell at a price significantly below the current bid that is handled in compliance with Exchange procedures regarding such orders, ("too marketable limit orders"); or*

(8) *an order that is handled in compliance with Exchange procedures regarding block crosses at significant premiums or discounts from the last sale.*

\* \* \* \* \*

#### 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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

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