the **Federal Register** on December 17, 1997 (62 FR 66138). However, by letter dated May 14, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 16, 1997, and the licensee's letter dated May 14, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 19th day of May 1998.

For the Nuclear Regulatory Commission.

Ronald B. Eaton Sr.,

Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–13901 Filed 5–22–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, June 4, 1998, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: May 13, 1998.

Phyllis G. Heuerman,

Acting Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 98–13920 Filed 5–22–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23190; File No. 812–10958]

Baron Capital Funds Trust, et al.; Notice of Application

May 18, 1998.

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

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940, as amended (the ''Act''), granting relief from Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Baron Capital Funds Trust and BAMCO, Inc., seek an order pursuant to Section 6(c) of the Act to the extent necessary to permit shares of any current or future series of the Trust designed to fund insurance products (''Insurance Funding Series'') and shares of any other investment company or series thereof now or in the future registered under the Act that is designed to fund insurance products and for which the Adviser, or any of its affiliates (''Affiliates''), may in the future serve as investment adviser, administrator, manager, principal underwriter or sponsor (the Insurance Funding Series and each such other investment company being hereinafter referred to, collectively, as the ''Funds'') to be sold to and held by: (a) Variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''), and (b) certain qualified pension or retirement plans outside of the separate account context (''Plans'').

APPLICANTS: Baron Capital Funds Trust (''Trust'') and BAMCO, Inc. (''Adviser'').

FILING DATES: The application was filed on January 12, 1998.

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 Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on June 12, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Baron Capital Funds Trust, c/o Linda Martinson, 767 Fifth Avenue, New York, New York 10153; copy to Richard T. Prins, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10222.

FOR FURTHER INFORMATION CONTACT: Elisa D. Metzger, Senior Counsel, or Mark C. Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, DC 20549, (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is a Delaware business trust and is registered under the Act as an open-end diversified management investment company. The Trust currently is composed of one series, Baron Capital Asset Fund, and is authorized to issue shares in separate series or classes. Additional series may be added in the future.

2. The Adviser is registered under the Investment Advisers Act of 1940 and is the investment adviser for the Trust. The Adviser is a wholly owned subsidiary of Baron Capital Group, Inc. (''BCG'').

3. The Funds intend to offer shares to separate accounts established by Participating Insurance Companies to fund variable annuity and variable life insurance contracts (''Contracts''). Shares of each series of any of the Funds, including the Insurance Funding Series, also may be offered directly to Plans outside of the separate account context.

Applicants state that due to changes in the interpretation of the tax law by the Internal Revenue Service, the Funds are afforded an opportunity to increase their asset base through the sale of shares of the Funds to Plans. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held by the portfolios of the Funds. The Code provides that such contracts shall not be treated as an annuity contract of life insurance contract for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued Regulations (Treas. Reg. § 1.817–5) which establish diversification requirements for the investment portfolios underlying variable annuity and variable life contracts. The Regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations also contain certain exceptions to this requirement, one of

which allows shares in an investment company to be held by a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817–5(f)(3)(iii)). To the extent permitted by applicable law, the Adviser or any Affiliate may act as investment adviser to Plans that will purchase shares of the Funds.

Applicants' Legal Analysis

1. Applicants seek an order exempting variable life insurance separate accounts of Participating Insurance Companies (and any principal underwriters and depositors of such accounts, and the Applicants) from Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to, and held by, (1) variable annuity and variable life separate accounts of both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context.

2. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their share ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment management company that also offers its shares to a variable annuity separate account or a flexible premium variable life insurance separate account of the insurer or of any affiliated or unaffiliated insurance company. The use of a common investment management company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is referred therein as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying investment management company are offered to variable annuity or variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.''

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all of assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or any affiliated life insurance company offering either scheduled premium variable life insurance contracts of flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, Rule 6e–3(T)(b)(15) permits mixed funding for flexible premium variable life insurance separate accounts under certain circumstances. The rule, however, does not permit shared funding, because the relief granted by the rule is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management investment company that offers it shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

4. Applicants state that the relief granted by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) will not be negatively affected by the purchase of shares of the Funds by Plans. Because the relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only where shares of the investment company are offered exclusively to separate accounts, however, exemptive relief is necessary if shares of the Funds are also to be sold to Plans.

5. Section 9(a) of the Act provides that a company may not act as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company, such as an officer, director or employee, is subject to a disqualification contained in Sections 9(a)(1) or (2). Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitation on mixed and shared funding. These exemptions limit the application of the eligibility restrictions of Section 9(a) to those affiliated individuals or companies that participate directly in the management of the underlying fund.

6. The partial relief granted from Section 9(a) in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) limits, in effect, the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of that section's policy and purposes. Applicants state that those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply to the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no connection with the investment company funding the separate accounts.

7. Applicants maintain that it is unnecessary to limit the applicability of the rules merely because the Funds may be sold in connection with mixed and shared funding. The Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Accordingly, Applicants state that applying the restrictions of Section 9(a) because of investment by other insurers' separate accounts would not serve any regulatory purpose. Additionally, Applicants submit that the reasons underlying the grant of relief from Section 9(a) will not be affected in any way by the proposed sale of the Funds to Plans.

8. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii), however, provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority, under certain circumstances. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard the voting instructions of contract owners in favor of any change in such company's

investment policies, principal underwriter, or any investment adviser, under certain circumstances.

9. Applicants state that, in adopting Rule 6e–2, the Commission expressly recognized that exemptions from pass-through voting requirements were necessary to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. Flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority, and therefore, corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) presumably were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2. Applicants assert that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding.

10. Applicants further state that where applicable, shares of the Funds sold to Plans will be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control Plans with two exceptions: (a) when the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(a)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Plan trustees have exclusive authority and responsibility for voting proxies.

11. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the name fiduciary. The Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Plans in their discretion. Some of the Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants in Plans (''Plan Participants'').

12. Where a Plan does not provide Plan Participants with the right to give voting instructions, the Applicants do not see any potential for irreconcilable material conflicts of interest between or among Contract holders and Plan Participants with respect to voting of the respective Fund's shares. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of irreconcilable material conflicts with respect to voting is not present with respect to such Plans since the Plans are not entitled to pass-through voting privileges. Even if a Plan were to hold a controlling interest in a Fund, the Applicants do not believe that such control would disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, the Applicants submit that investment in the Funds by a Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Plan Participant voting rights cannot be frustrated by veto rights of insurers of state regulators.

13. Where a Plan provides Plan Participants with the right to give voting instructions, the Applicants see no reason to believe that Plan Participants in Plans generally or those in a particular Plan, either as a single group or in combination with Plan Participants in other Plans, would vote in a manner that would disadvantage Contract holders. The purchase of shares of the Funds by Plans that provide voting rights does not present any complication not otherwise occasioned by mixed or shared funding.

14. Applicants represent that the Funds will inform each shareholder, including each separate account and Plan, of information necessary for the meeting including their respective share ownership in the Fund. A Participating Insurance Company will then solicit voting instructions consistent with the ''pass through'' voting requirement.

15. Applicants assert that no increased conflict of interest would be present if the requested relief is granted. Applicants maintain that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. For example, when different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. The possibility, however, also exists when a single insurer and its affiliates offer their insurance products in several states, as is currently permitted.

16. Applicants also assert that affiliations do not reduce the potential for differences in state regulatory requirements. In any event, the conditions set forth in the application and described below are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds.

17. Applicants maintain that affiliation does not eliminate the potential for divergent judgments as to when a Participating Insurance company could disregard Control holder voting instructions. The potential for disagreement is limited by the requirement that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if the Participating Insurance Company's decision to disregard Contract holder voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its separate account's investment in that Fund and no charge or penalty will be imposed upon the Contract holders as a result of such withdrawal.

18. Applicants submit that there is no reason why the investment policies of a Fund would or should be materially different from what it would or should be if it funded only variable annuity contracts or only variable life insurance contracts rather than Contracts and Plans. The Funds will not be managed to favor or disfavor any particular insurer or type of Contract. Regardless of the types of Fund shareholders, the Adviser is legally obligated to manage the Funds in accordance with each Fund's investment objectives, policies and restrictions as well as any guidelines established by the relevant Board of Directors or Trustees of the Funds. Applicants assert that the

Adviser does not give consideration to the identity of particular shareholders in a Fund, and, thus, manages the Funds in the same manner as any other mutual fund.

19. Applicants submit that there is no greater potential for material irreconcilable conflicts arising between the interests of participants and contract owners of separate accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

20. Applicants note that while there are differences in the manner in which distributions from variable contracts and Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and a separate account or Plan is unable to net purchase payments to make the distributions, the separate account and Plan will redeem shares of their Funds at their net asset value. A Plan will make distributions in accordance with the terms of the Plan. A Participating Insurance Company will make distributions in accordance with the terms of the variable contract.

21. Applicants state that the ability of the Funds to sell their shares directly to Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the Act, with respect to any Contract owner as opposed to a participant under a Plan. Applicants state that regardless of the rights and benefits of participants under the Plans or Contract owners under the Contracts, the Plans and the variable annuity and variable life insurance separate accounts only have rights with respect to their respective shares of the Funds. They can only redeem such shares at their net asset value. No shareholder of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

22. Applicants submit that there are not conflicts between Contract owners of separate accounts and participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, the Plans can make the decision quickly and implement the redemption of their shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments or, or as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that even if there should arise issues where the interests of Contract owners and the interests of Plans are in conflict, the issues can be almost immediately resolved because the Plans can, on their own, redeem the shares out of the Funds.

23. Applicants state that various factors have kept more insurance companies from offering variable annuity contracts and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public as investment experts. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of a Fund as a common investment medium for variable contracts would reduce or eliminate these barriers.

24. Applicants maintain that the Participating Insurance Companies will benefit not only from the investment management and administrative expertise of the Adviser and its Affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. It would permit a greater amount of assets available for investment, thereby promoting economies of scale, permitting greater diversification, and making the addition of new portfolios more feasible. Additionally, making the Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Trustees or Board of Directors (each, a ''Board'') of the Trust and each Fund will consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) for a period 45 days if the vacancy or vacancies may be filed by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Funds for the existence of any irreconcilable material conflict between and among the interests of the Contract holders of all separate accounts and of Plan Participants and Plans investing in the Funds, and determine what action, if any, should be taken in response to any such conflicts. An irreconcilable material conflict may arise for a variety of reasons, which may include: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance Contract holders; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract holders; and (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan Participants.

3. The Adviser (or any other investment adviser of a Fund), any Participating Insurance Company and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the issued and outstanding shares of a Fund (such Plans referred to hereafter as ''Participating Plans'') will be required to report any potential or existing conflicts to the Board of the relevant Fund. The Adviser (or any other investment adviser of a Fund), Participating Insurance Companies and Participating Plans will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by a Participating Insurance Company to inform the Board whenever it has determined to disregard Contract holder voting instructions and, if pass-through voting is applicable, an obligation by a

Participating Plan to inform the Board whenever it has determined to disregard Plan Participant voting instructions. The responsibility to report such information and conflicts to and to assist the Boards will be contractual obligations of all Participating Insurance Companies and Participating Plans investing in the Funds under their agreement governing participation in the Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract holders and, if applicable, Plan Participants.

4. If a majority of the Board of a Fund, or a majority of the disinterested trustees or directors, determine that an irreconcilable material conflict exists, the relevant Participating Insurance Companies and Participating Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), will be required to take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict. Such steps could include: (a) withdrawing the assets allocable to some or all of the separate accounts from the Fund and reinvesting such assets in a different investment medium, which may include another series of the Trust or another Fund; (b) submitting the questions of whether such segregation should be implemented to a vote of all affected Contract holders and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance Contract holders of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract holders the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If an irreconcilable material conflict arises because of a decision by a Participating Insurance Company to disregard Contract holders voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw its separate account's investment in such Fund, with no charge or penalty imposed as a result of such withdrawal. If an irreconcilable material conflict arises because of a Participating Plan's decision to disregard Plan Participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Participating Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, with no charge or penalty imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of an irreconcilable material conflict and bearing the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Funds, and these responsibilities will be carried out with a view only to the interests of Contract holders and Plan Participants, as applicable.

5. For purposes of Condition Four, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will a Fund or the Adviser (or any other investment adviser of the Funds) be required to reestablish a new funding medium for any Contract. No Participating Insurance Company shall be required by Condition Four to set zero copy attached received instructions. Each Participating Plan will vote as required by applicable law and governing plan documents.

8. All reports of potential or existing conflicts received by a Board, and all Board action will regard to determining the existence of a conflict, notifying the Adviser, Participating Insurance Companies and Participating Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. Each Fund will notify all Participating Insurance Companies with respect to such Fund that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in the Fund and the interests of Plans investing in the Fund may conflict; and (c) the Board will monitor such Fund for any material conflicts of interest and determine what action, if any, should be taken.

10. Each Fund will comply with all provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the person having a voting interest in the shares of the respective Fund), and in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although the Funds are not within the trusts described in Section 16(c) of the Act), as well as with Section 16(a) and, if applicable, Section 16(b) of the Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or Rule 6e–3 under the Act is adopted) to provide exemptive relief from any provision of the Act, or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds shall and the Participating Insurance Companies, as appropriate, shall be required to take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent applicable.

12. No less than annually, the Adviser (or any other investment adviser of a Fund), the Participating Insurance Companies and Participating Plans shall submit to the Boards such reports, materials, or data as such Boards may reasonably request so that the Boards may fully carry out the obligations imposed upon them by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Adviser, Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Boards, shall be a contractual obligation of the Adviser, all Participating Insurance Companies and Participating Plans under the agreements governing their participation in the Funds.

13. If a Plan or Plan Participant shareholder should become an owner of 10% or more of the issued and outstanding shares of a Fund, such Plan will execute a participation agreement with such Fund including the conditions set forth in the application to the extent applicable. A Plan or Plan Participant shareholder will execute an application containing an acknowledgment of this condition at the

time of its initial purchase of shares of the Fund.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–13815 Filed 5–22–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–39996; File No. SR–AMEX–97–30)

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to Professional Hearing Officers, Executive Committee Review of Appeals From Disciplinary Panel Decisions and Indemnification of Persons Serving on Disciplinary Panels and Exchange Officials

May 18, 1998.

I. Introduction

On August 11, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''ACT'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change which amends the Exchange's Constitution and Rules of Procedure applicable to its disciplinary proceedings. A notice of the proposed rule change appeared in the **Federal Register** on March 24, 1998.[3] The Commission received no comment letters concerning this rule change. This order approves the proposed rule change.

The Exchange's Constitution and Rules of Procedure applicable to disciplinary proceedings currently require, among other things, the Exchange to draw members of disciplinary panels exclusively from the ranks of practicing securities industry professionals. These rules also generally require the Chairmen of Disciplinary Panels to be Exchange Officials. The Exchange believes the current system for selecting Disciplinary Panels has worked well for many years, and Panel members have performed an invaluable service to the Exchange on a voluntary basis. Recently, the Exchange has noticed that the complexity of the legal issues confronting its disciplinary panels has increased, thus requiring Article V, Section 1(b) of the Exchange's Constitution and its Rules of Procedure to be modified.

II. Description of the Proposal

i. Professional Hearing Officers

Frequently, Disciplinary Panels face complicated legal questions that must be resolved promptly to ensure the timely resolution of enforcement matters. While the Exchange provides the Panels with an assistant, this staff person has a non-substantive role in enforcement proceedings and, therefore, is unable to fully participate in evaluating important legal, evidentiary and procedural questions. Accordingly, the Exchange has amended its Constitution and Rules to provide for professional hearing officers to serve as chairmen and voting members of Exchange Disciplinary Panels.[4] The remaining members of Disciplinary Panels would continue to be drawn from the ranks of practicing securities industry professionals as currently provided for in the Exchange's Constitution and Rules.[5]

ii. Indemnification of Persons Serving on Disciplinary Panels and Exchange Officials

The indemnification provision of the Exchange's Constitution had not specifically mentioned persons serving on Disciplinary Panels nor Exchange Officials. Although the Exchange believes there are sound arguments for concluding that persons serving on Disciplinary Panels and Exchange Officials already are covered by the Exchange's indemnity provision, the Exchange has, nevertheless, amended the Constitution to make this coverage explicit to help ensure that the Exchange can continue to attract and retain qualified persons to serve in these capacities.[6]

iii. Board Review of Disciplinary Panel Decisions

Prior to this proposal, in all instances, disciplinary appeals were heard by the Executive Committee of the Board pursuant to delegated authority from the Board of Governors as authorized by Article V, Section 1(b) of the Constitution except where a member or member organization is expelled or suspended for a period of one year or more. In such instance, a review by the full Board would have been required. However, the Exchange has amended its Constitution to vest in the Executive Committee the delegated authority to hear *all* appeals (including matters the Board calls for review) regardless of the nature of the respondent or the penalty.[7] This should make the appeal process less cumbersome, while at the same time eliminating a special review privilege (*i.e.*, full Board review) that existed for members and member organizations, but not for their employees. The full Board would retain authority to review disciplinary decisions when such review is deemed appropriate.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act[8] and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is

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

[2] 17 CFR 240.19b–4 (1995).

[3] Securities Exchange Act Release No. 39767 (March 17, 1998), 63 FR 1414 (March 24, 1998).

[4] The Amex expects that the ''professional hearing officer will be an individual who is a lawyer who has had litigation experience in the securities area. It is possible that such individual, or his firm, may provide advice or services to the Exchange on matters that do not relate to the investigation or preparation of disciplinary matters.'' *See* letter from Janice M. Stroughter, Director of Hearings and Special Counsel, Legal & Regulatory Policy, American Stock Exchange, Inc., to Katherine England, Esq., Assistant Director, Market Supervision, SEC, dated February 25, 1998 (''Amendment No. 2'').

[5] *CR.* CBOE Rule 2.1 (establishing committees, procedures and duties and powers thereof); NYSE rule 476(b) (outlining the composition of a Hearing Board, the selection pool from which panelists are chosen and length of service); and PCX Rule 11 (procedures for establishing committees in general, membership selection, and delegation of jurisdiction to specific committees).

[6] *Cf.* CBOE Const. art. IX, NYSE Const. art. XII, and PCX Const. art. XVI. According to these provisions, indemnification is granted to members of any committees authorized by their respective Constitutions or Boards.

[7] *Cf.* CBOE Rule 17.10 (review shall be conducted by the Board or a committee of the Board); NYSE Rule 476(f) (review of Hearing Panel's decision conducted by the Board); and PCX Rule 10.8(a) (review may either be conducted by the Board or by a committee appointed by Board).

[8] Pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. In updating its rules to improve its disciplinary process, the Exchange has enhanced efficiency by streamlining a process that should enable the Exchange to expeditiously resolve disciplinary actions. Competition should also improve as members and customers become confident that wrongdoing will be quickly and effectively addressed. If competition increases then capital formation should improve as an increase in business should result in increased profits. 15 U.S.C. 78c(f).