

utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f-1. If such records were not retained by reporting institutions, compliance with Rule 17f-1 could not be monitored effectively.

The Commission estimates that there are 24,518 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (33 minutes or .55 hours). The total estimated annual burden is 13,484.9 hours (24,518 x .55 hours = 13,484.9). Assuming an average hourly cost for clerical work of \$10, the average total yearly record retention cost for each respondent would be \$5.50. Based on these estimates, the total annual cost for the estimated 24,518 reporting institutions would be approximately \$134,849.

Rule 17f-1(g) does not require periodic collection, but does require retention of records generated as a result of compliance with Rule 17f-1. Under Section 17 (b) and (f) of the Act, the information required by Rule 17f-1(g) is available to the Commission and Federal bank regulators for examinations or collection purposes. Rule 0-4 of the Act deems such information to be confidential. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General Comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 22, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-20247 Filed 7-28-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23329; 813-168]

The Goldman Sachs Group, L.P.; Notice of Application

July 22, 1998.

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

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") exempting certain employees' securities companies from all provisions of the Act, except sections 9 and 36 through 53 and applicable rules and regulations; and certain other employees' securities companies from all provisions of the Act, except section 9, sections 17 and 30, sections 36 through 53, and applicable rules and regulations.

APPLICANT: The Goldman Sachs Group, L.P. ("GS Group").

FILING DATES: The application was filed on July 21, 1997. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

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 13, 1998, and should be accompanied by proof of service on 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicant, 85 Broad Street, New York, New York 1004.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942-0526, 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 from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942-8090).

Applicant's Representations

1. GS Group, a Delaware limited partnership, together with its corporate and partnership subsidiaries, is a leading international investment banking organization. The GS Group, and entities that are controlling, controlled by, or under common control with, the GS Group (collectively, "Goldman Sachs" and individually a "Goldman Sachs Entity") propose to establish certain investment vehicles ("Funds") as a means of rewarding and retaining Goldman Sachs' limited partners, officers, employees, and consultants. The principal purposes of the Funds are to enhance the investment opportunities available to these persons, strengthen the relationship between employment and wealth creation, attract talented professionals to Goldman Sachs, and provide additional investment opportunities to retired partners.

2. The Funds will be organized as partnerships, limited liability companies or other entities. Each Fund will enable its investors (i) to co-invest with Goldman Sachs in investment opportunities and (ii) to invest in opportunities identified by Goldman Sachs or in collective investment programs with investment strategies developed, monitored or overseen by Goldman Sachs. Interests in the Funds ("Interests") will be sold without a sales load. The Funds will be divided into three categories—Bridge Street Funds, Battery Place Funds, and Stone Street Funds.

3. The Bridge Street Funds include the Bridge Street Diversified Funds, Bridge Street Real Estate Funds and Bridge Street Separate Investment Funds. These Funds will be offered and sold to (i) individual limited partners¹ who are active in Goldman Sachs business and share in the profits and losses of the business ("Participating Limited Partners"), (ii) individual limited partners who are no longer active in Goldman Sachs' business and who earn a fixed return on their capital invested in the GS Group, members of their families, trusts, and family investment vehicles ("Other Individual Limited Partners" and, together with Participating Limited Partners, "GS Limited Partners"), and (iii) Qualified Participants (as defined below) of the GS Limited Partners (collectively, the "Bridge Street Investors").

4. The Battery Place Funds include the Battery Place Diversified Funds,

¹ Interests also could be sold to entities resident outside the U.S. that are wholly-owned and controlled by the individual limited partners and formed for tax purposes.

Battery Place Real Estate Funds, and Battery Place Separate Investment Funds. These Funds will be offered and sold to managing directors of Goldman Sachs ("Managing Directors") who are not GS Limited Partners and their Qualified Participants as defined below (collectively, the "Battery Place Investors"). Battery Place Funds also may be offered and sold to Bridge Street Investors and Stone Street Investors described below.

5. The Stone Street Funds include Stone Street Diversified Funds, Stone Street Real Estate Funds, and Stone Street Separate Investment Funds. These Funds will be offered and sold to certain officers and employees of Goldman Sachs ("Eligible Employees")² and certain consultants of Goldman Sachs ("Consultants"),³ and Qualified Participants, defined below, of Eligible Employees and Consultants (collectively, the "Stone Street Investors"). Stone Street Funds also may be offered and sold to Bridge Street Investors and Battery Place Investors. No Battery Place or Stone Street Fund will invest in a Bridge Street Fund.

6. All GS Limited Partners, Managing Directors, Eligible Employees, and Consultants will be accredited investors under Rule 501(a)(6) of Regulation D ("Regulation D") under the Securities Act of 1933. GS Limited Partners that invest in the Bridge Street Funds may also be accredited investors under Rule 501(a)(5) of Regulation D.

7. Goldman Sachs has a number of officers and employees located outside the United States. Approximately 70 of these persons would qualify as Bridge Street Investors, 50 would qualify as Battery Place Investors, and 850 would qualify as Stone Street Investors. These persons are not citizens of the United States and are not subject to U.S. federal income taxes. To maintain their tax status, these persons desire to make investments in the Funds through a separate investment vehicle organized in a non-U.S. jurisdiction ("Nonresident Investment Vehicle"). Applicants expect that the Nonresident Investment Vehicles will be owned by the relevant Eligible Investors in proportion to the ownership interests that each investor would have had in the relevant Fund itself, and that the indirect ownership interest of each Eligible Investor in the relevant Fund will therefore be the same

as if all such Eligible Investors had invested directly in the Fund.

8. Bridge Street Investors, Battery Place Investors, Stone Street Investors, Goldman Sachs, and investors in the Nonresident Investment Vehicles are collectively referred to as "Eligible Investors." A "Qualified Participant" eligible to invest in the Funds is a spouse, parent, child, spouse of child, brother, sister or grandchild of a GS Limited Partner, a Managing Director who is not a GS Limited Partner, an Eligible Employee or Consultant (each an "Eligible Family Member"), or a family investment vehicle, foundation, charitable organization or trust established by, or for the benefit of, a GS Limited Partner, a Managing Director, an Eligible Employee or Consultant, or their Eligible Family Members. A Qualified Participant must qualify as an accredited investor under Rule 501(a) of Regulation D.

9. The manager of each Fund ("Manager") will be an entity that is directly or indirectly wholly-owned by a Goldman Sachs Entity or the Participating Limited Partners. The Manager will register as an investment adviser under the Investment Advisers Act of 1940 if required under applicable law. The Manager will be responsible for administering the Fund's investment program and business affairs except for certain administrative responsibilities that may be delegated to other Goldman Sachs Entities or third parties.

10. Interests in a Fund will not be transferable, except with the express consent of the Manager and then only to another Eligible Investor, the Manager, or Goldman Sachs. Interests will not be redeemable at the option of the investor, except upon the death of the investor. Goldman Sachs will have the option to purchase an investor's Interest at a price determined by a formula described in the offering documents for the Fund if an Other Individual Limited Partner retires as a limited partner or a Participating Limited Partner retires and does not become an Other Individual Limited Partner, or, if for any reason, the employment of a Battery Place or Stone Street Investor terminates. The terms of any repurchase option will be disclosed to Eligible Investors in the offering documents for each Fund. The failure of an investor in a Fund to make a required capital contribution to the Fund may result in the forfeiture of the portion of the investor's Interest attributable to the defaulted amount and to any remaining capital commitment. The terms of any forfeiture provision will be disclosed in the offering documents for each Fund. Upon repurchase, a Battery Place or a Stone

Street Investor will receive at least the lower of (i) the amount invested by the investor, plus interest (at an interest rate disclosed in the offering document for the applicable Battery Place or the Stone Street Fund), and with appropriate deduction for any distributions made by the Fund to the investor, and (ii) the fair market value of the investor's Interest in the Battery Place or Stone Street Fund as determined at the time of repurchase, less the portion, if any, of the fair market value attributable to the Fund's use of leverage, if any.

11. The Manager of a Fund may be paid an annual management fee by the Fund, and in the case of a Bridge Street Fund may also be paid a special allocation.⁴ The Manager also may receive a performance-based fee (a "carried interest") based on the net gains of the Fund's investments in addition to any amount allocable to the Manager's capital contribution. Any Goldman Sachs Entity or a Manager may be compensated for providing services to entities in which a Fund makes an investment, and may engage in market-making activities in the securities of entities in which a Fund makes an investment. Employees of Goldman Sachs may be compensated for serving as officers or directors of entities in which the Funds make an investment.

12. Goldman Sachs or a third party may lend to the Funds or become a senior or preferred limited partner or other senior equity holder of a Fund. Any such loans made by Goldman Sachs or a third party will be on commercially reasonable arm's length terms. To the extent that a senior interest may be a security within the meaning of the Act, the senior interest holder will be required to be an Eligible Investor.

13. The Funds may co-invest with a Goldman Sachs Entity. The Funds also may co-invest with an investment vehicle for investors unaffiliated with Goldman Sachs and over which a Goldman Sachs Entity exercises investment discretion ("Third Party Funds"). Co-investments with a Third Party Fund will not be subject to condition 3 below. No Fund will purchase or otherwise acquire any security issued by a registered investment company if the Fund immediately after the purchase or

² Eligible Employees will be experienced professionals in the investment banking, asset management, securities or commodities businesses, or in administrative, financial, accounting, legal or related operational fields.

³ Consultants will have levels of expertise and sophistication at least comparable to, and in most cases exceeding, those of Eligible Employees.

⁴ In order to ensure that GS Limited Partners who do not participate in a Bridge Street Fund do not, in effect, bear the direct and indirect costs of establishing and administering that Fund, GS Group or an affiliated person of GS Group within the meaning of section 2(a)(3)(C) of the Act may become an interest holder of each Bridge Street Fund and receive a special allocation. Special allocations will have priority over all other Fund allocations.

acquisition will own in the aggregate more than 3% of the total outstanding voting stock of the registered investment company.

14. The Manager will have discretion as to the distribution of any cash flow or any proceeds derived from a Fund's investments, which will depend on the investment objective of the Fund and will be described in the Fund's offering documents. The offering documents for each Fund also will describe the following types of information to the extent material to an Eligible Investor's investment decision: investment objectives and policies (including a discussion of leveraging strategies, if any, that will be utilized by the Fund); the organizational structure of the Manager and the Fund; risk factors; any conflicts of interest; procedures relevant to the offering of Interests in the Fund; use of proceeds from the offering; relationship between the Fund and any other Fund; the management of the Fund, including any fees to be paid to the manager; taxation of Interests; procedures of allocations and distributions; limits on the transferability of Interests in the Funds; special provisions applicable to the Funds, including any relating to disposition of an Interest in the Fund in the event of termination of the investor's relationship with Goldman Sachs; and such other matters as Goldman Sachs considers material to the investment decision of Eligible Investors. The offering documents will be made available to all Eligible Investors.

15. The Manager will send investors in each Fund annual reports regarding the operations and assets of the Fund. Each Fund's annual report will contain audited financial statements with disclosure of outstanding borrowings of the Fund. Each investor in a Fund also will receive a report of his or her distributive share of income, gains, losses, credits and other items for U.S. federal income tax purposes resulting from the operation of the Fund during the tax year.

Applicant's Legal Analysis

1. Section 6(b) of the Act provides that the Commission shall exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission shall consider, in determining from which provisions of the Act the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales

load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines "employees' securities company" to include any investment company all of whose outstanding securities are beneficially owned by (a) current or former employees, or persons on retainer, of one or more affiliated employers, (b) immediate family members of such persons, or (c) such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 from selling or redeeming their securities. Section 6(e) of the Act provides that in connection with any order exempting an investment company from any provisions of section 7, certain specified provisions of the Act will be applicable to the company, and to other persons in their transactions and relations with the company, as though the company were registered under the Act, if the Commission deems it necessary or appropriate in the public interest or for the protection of investors.

3. Applicant requests an order under sections 6(b) and 6(e) of Act exempting the Bridge Street Funds from all provisions of the Act, except sections 9 and 36 through 53 and applicable rules and regulations. Applicant also requests an order under sections 6(b) and 6(e) of the Act exempting the Battery Place and the Stone Street Funds from all provisions of the Act, except section 9, certain provisions of sections 17 and 30, and sections 36 through 53, and applicable rules and regulations.⁵

A. Bridge Street Funds

4. Applicant asserts that the requested exemption for the Bridge Street Funds is consistent with the protection of investors because the Bridge Street Investors who are Participating Limited Partners participate in the profits and losses of Goldman Sachs directly and those who are Other Individual Limited partners hold substantial partnership capital of GS Group. Applicant states that the capital of Goldman Sachs is held by over 300 Participating and Other Individual Limited Partners, their family members or trusts, and institutional limited partners. These same persons (or their Qualified Participants), other than institutional limited partners, comprise the class of Bridge Street Investors. Accordingly,

⁵ The requested order would supersede an existing order. *Stone Street Fund 1984*, Investment Company Act Release Nos. 19905 (Nov. 24, 1993) (notice) and 19978 (Dec. 21, 1993) (order).

given the unique community of interests among the Bridge Street Investors and Goldman Sachs, applicant asserts that the expectation that Goldman Sachs will act in the ordinary course of its business to maximize the profits of GS Limited Partners provides ample protection to the Bridge Street Investors. Applicant states that, given the relationship of trust and confidence between the Bridge Street Investors and Goldman Sachs, and their knowledge of the operations of Goldman Sachs, the proposed exemption would be appropriate. Applicant acknowledges that new Bridge Street Funds may be created and existing Bridge Street Funds may raise capital from new investors in reliance upon the requested order only so long as Goldman Sachs continues its current form of organization as a limited partnership.

B. Battery Place and Stone Street Funds

5. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, to sell any security or other property to the company or to purchase any security or other property from the company. Applicant requests an exemption to the extent necessary to (i) permit any Goldman Sachs Entity, acting as principal, to engage in any transaction directly or indirectly with any Battery Place or Stone Street Fund or any entity controlled by a Battery Place or Stone Street Fund: (ii) permit any Battery Place or Stone Street Fund to invest in or engage in any transaction with any entity, acting as principal, (a) in which the Battery Place or Stone Street Fund, any entity controlled by the Fund or any Goldman Sachs Entity has invested or will invest, or (b) with which the Battery Place or Stone Street Fund, any entity controlled by either a Battery Place or Stone Street Fund or any Goldman Sachs Entity is or will become otherwise affiliated; and (iii) permit any partner or other investor in a Third Party Fund (a "Third Party Investor"), acting as principal, to engage in any transaction directly or indirectly with a Battery Place or Stone Street Fund or any entity controlled by a Battery Place or Stone Street Fund.

6. Applicant asserts that the requested exemption is necessary, among other purposes, to enable the Funds to make investments in companies, properties, or securities which are offered by a Goldman Sachs Entity (or any GS Partners' Investment Vehicle or Third party Fund) to investors, or in which a Goldman Sachs Entity (any GS Partners' Investment Vehicle or Third Party Fund) is investing or may have made an

investment. Applicant states that the Battery Place or Stone Street Investors will be fully informed of the possible extent of each Fund's dealings with Goldman Sachs, GS Partners' Investment Vehicles, and Third party Funds, and as professionals employed in the securities, or a related, industry will be able to evaluate the attendant risks. Moreover, applicant asserts that the community of interest among the Battery Place or Stone Street Investors and the GS Limited Partners will reduce the risk of abuse in these transactions.

7. Section 17(d) of the Act and rule 17d-1 under the Act prohibit affiliated persons, and affiliated persons of such persons, from participating in joint transactions with a registered investment company unless authorized by the Commission. In passing on applications for such orders under rule 17d-1, the Commission will consider whether the participation of the investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicant requests an exemption from section 17(d) and rule d-1 to permit the Battery Place or Stone Street Funds to engage in transactions in which affiliated persons of the Funds or affiliated persons of those persons (including Third Party Investors) may be participants.

8. Applicant asserts that section 17(d) and rule 17d-1 might prevent the Battery Place and the Stone Street Funds from engaging in transactions in which a Battery Place or a Stone Street Investor, a Goldman Sachs Entity, or a Third Party Fund, are participants. Applicant submits that restricting these types of investments by a Fund would undermine a principal rationale of the Battery Place and the Stone Street Funds, i.e., to provide a vehicle for the Battery Place and the Stone Street Investors to invest alongside Goldman Sachs (acting through a Goldman Sachs Entity, GS Partners' Investment Vehicles or Third Party Funds). Applicant further asserts that attractive investment opportunities of the types considered by the Battery Place and the Stone Street Funds often require each participant to make available funds in amounts greater than those available to a Fund alone and, in certain instances, a Fund may only invest in these opportunities as a participant with a Goldman Sachs Entity, a GS Partners' Investment Vehicle or a Third Party Fund. Applicant submits that permitting joint investments by a Goldman Sachs Entity, a GS Partners' Investment Vehicle, a Third Party Fund and a Battery Place

and/or Stone Street Fund will not lead to the disadvantageous treatment of either Fund because Goldman Sachs will be acutely concerned with its relationship with the Battery Place and the Stone Street Investors.

9. Section 17(e) of the Act and rule 17e-1 under the Act limit the compensation an affiliated person of a registered investment company, or an affiliated person of such a person, may receive when acting as agent or broker for the company. Applicant requests an exemption from section 17(e) to permit a Goldman Sachs Entity (including the Manager), acting as an agent or broker, to receive compensation from a Battery Place or Stone Street Fund in connection with the purchase or sale by either Fund of securities, provided the fees or other compensation are "usual and customary." Applicant states that fees or other compensation will be deemed "usual and customary" only if (i) the Battery Place or Stone Street Fund is purchasing or selling securities alongside other unaffiliated third parties or Third Party Funds who are also similarly purchasing or selling securities, (ii) the fees or other compensation that are charged to the Battery Place or Stone Street Fund are also charged to the unaffiliated third parties and Third Party Funds, and (iii) the amount of securities being purchased or sold by the Battery Place or Stone Street Fund does not exceed 50% of the total amount of securities being purchased or sold by the Battery Place or Stone Street Fund and the unaffiliated third parties or Third Party Funds. Applicant also requests an exemption from paragraph (b) of rule 17e-1 to permit each Battery Place and Stone Street Fund to comply with rule 17e-1 without having a majority of the board of directors (or comparable body) of the Manager who are not "interested persons," as defined in section 2(a)(19) of the Act, take the actions and give the approvals that are required under the rule. Applicant states that because the officers and directors of the Manager will be affiliated persons, without the relief requested, a Battery Place or a Stone Street Fund could not comply with rule 17e-1(b).

10. Section 17(f) of the Act provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with Commission rules. Section 17(f) also prohibits a company which is a member of a national securities exchange and which trades in securities for its own account from acting as a custodian

except in accordance with rules prescribed by the Commission. Rule 17f-1 under the Act specifies the requirements that must be satisfied for a registered management investment company to use a broker-dealer as a custodian.

11. One of Goldman Sachs' principal operating businesses in the United States is Goldman, Sachs & Co. ("GS&Co."), a New York limited partnership that is a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act"), and a member of the National Association of Securities Dealers and the New York Stock Exchange. Applicant requests an exemption from section 17(f) of the Act and rule 17f-1 under the Act to the extent necessary to permit GS&Co. or another Goldman Sachs Entity to act as custodian of Fund assets without a written contract. Applicant states that any securities of the Battery Place and the Stone Street Funds held by GS&Co. will have the protection of a fidelity bond. Applicant also requests an exemption to the extent necessary to establish one or more brokerage accounts at GS&Co. in which the Battery Place and the Stone Street Funds will participate without the necessity of separately segregating the securities and investments of each Fund. Applicant states that this relief is needed to facilitate the investment by the Battery Place and the Stone Street Funds in a joint account established by GS&Co. for investment by Goldman Sachs Entities in certain types of investments. Applicant believes that the financial position of GS&Co., the regulation to which it is subject under the Exchange Act and the relationship of the Battery Place and Stone Street Investors, as Eligible Employees of and Consultants to GS&Co., should adequately protect the Funds' assets.

12. Section 17(g) of the Act and rule 17g-1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to the securities or funds of the company. Rule 17g-1 requires that a majority of the investment company's directors who are not "interested persons," as defined in section 2(a)(19) of the Act, take certain actions and give certain approvals. Applicant requests relief from the disinterested director approval requirement because all directors of the Manager will be affiliated persons of the Funds, and the Battery Place and the Stone Street Funds therefore could not comply with the requirement.

13. Section 17(j) of the Act and rule 17j-1 under the Act require a registered investment company to adopt a written

code of ethics that requires every access person of the company to report to the company concerning transactions in any security in which the access person has, or by reason of the transactions acquires, any direct or indirect beneficial ownership in the security. Applicant requests an exemption from section 17(j) and rule 17j-1 (except for the antifraud provisions of paragraph (a)) because the requirements are burdensome and unnecessary as applied to the Funds. Applicant asserts that compliance with these requirements would be unnecessary in light of the community of interest between investors in the Funds and Goldman Sachs and the proposed conditions to the requested order.

14. Applicant also requests an exemption from paragraphs (a), (b), (c), (d), and (h) of section 30 of the Act to exempt the Battery Place and the Stone Street Funds from filing annual and quarterly reports with the Commission. Applicant states that the pertinent information in the filings must, under the terms of the organizational documents of the Funds, be sent to their investors. Exemptive relief is also requested under section 30(e) of the Act to permit the Battery Place and the Stone Street Funds to report annually to their investors in the manner prescribed by the organizational documents of the Funds. Lastly, applicant requests an exemption from the requirements of section 30(h) of the Act so that the Manager of each Battery Place and each Stone Street Fund and all persons who are directors or officers of a Manager and each member of the board of directors, if any, of a Battery Place or a Stone Street Fund and any other persons who may be deemed members of an advisory board of a Battery Place or a Stone Street Fund will not be required to file Forms 3, 4, or 5 under section 16 of the Exchange Act with respect to their ownership of interests in a Battery Place or a Stone Street Fund.

Applicant's Conditions

The Battery Place and the Stone Street Funds agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by Section 17(a) or section 17(d) and rule 17d-1 (the "Section 17 Transactions") will be effected only if the Manager determines that: (i) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the investors in the Fund and do not involve overreaching of the Fund or its investors on the part of any person concerned; and (ii) the transaction is

consistent with the interests of the investors in the Fund, the organizational documents of the Fund and the Fund's report to its investors. In addition, each Manager will record and preserve a description of each Section 17 Transaction, its findings, the information or materials upon which its findings are based and the basis for the findings. All required records will be maintained for the life of each Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff. All required records will be maintained in an easily accessible place for at least the first two years.

2. Each Manager will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of an affiliated person, promoter, or principal underwriter.

3. Each Manager will not invest the funds of any Funds in any investment in which a "Co-Investor" (as defined below) has acquired, or proposes to acquire, the same class of securities of the same issuer, if the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (i) gives the Manager sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (ii) refrains from disposing of its investment unless the Fund has the opportunity to dispose of the Fund's investment prior to or concurrently with, on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor" means any person who is: (i) an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Fund (other than a Third Party Fund); (ii) Goldman Sachs; (iii) an employee, officer, or director of Goldman Sachs; (iv) a GS Partners' Investment Vehicle; (v) any entity (other than a Third Party Fund) with respect to which Goldman Sachs provides management, investment management or similar services as manager, investment manager, or Manager or in a similar capacity, and for which it may receive compensation, including without limitation, management or performance fees, carried interests entitling it to share disproportionately in income and capital gains, or similar compensation; or (vi) a company (other

than a Third Party Fund) in which an officer or director of the Manager acts as an officer, director, or Manager, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (i) to its direct or indirect wholly-owned subsidiary, to any company ("Parent") of which the Co-Investment is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (ii) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any such family member; (iii) when the investment is comprised of securities that are (a) listed on a national securities exchange registered under section 6 of the Exchange Act; (b) national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2-1 under the Exchange Act; or (c) listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. In any case where purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a 5% or more investment in such entity by a director, officer, or employee of the Manager, such individual will not participate in the Manager's determination of whether or not to effect the purchase or sale.

The Bridge Street, Battery Place, and Stone Street Funds agree that any order granting the requested relief will be subject to the following conditions:

5. Each Manager will send to each investor who had an Interest in its Fund, at any time during the fiscal year then ended, financial statements of the Fund audited by the Fund's independent accountants. At the end of each fiscal year, each Manager will make a valuation or have a valuation made of all of the assets of the Fund as of such fiscal year end. The valuation of the Fund assets may be by independent third parties appointed by the applicable Manager and deemed qualified by such Manager to render an opinion as to the value of Fund assets, using such methods and considering such information relating to the investments, assets and liabilities of the Fund as such persons may deem appropriate, but in the case of an event subsequent to the end of the fiscal year

materially affecting the value of any Fund asset or investment, the Manager may revise the valuation as it, in its sole discretion, deems appropriate. In addition, each Manager shall send a report to each person who was an investor in its Fund at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the investor of his or its federal and state income tax returns and a report of the investment activities of the Fund during such year by such date as may be required to permit investors to comply with income tax filing requirements (including extensions).

6. Each Fund and its Manager will maintain and preserve, for the life of the Fund and at least two years thereafter, all accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and annual reports of such Fund to be provided to the investors, and agree that all such records will be subject to examination by the Commission and its staff. All required records will be maintained in an easily accessible place for at least the first two years.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-20246 Filed 7-28-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40240; File No. SR-Amex-98-16]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to the Announcement of Closing Rotations in Equity and Narrow-Based Index Options After 4:02 p.m.

July 21, 1998.

I. Introduction

On April 8, 1998, the American Stock Exchange, Inc. ("Amex" or "The Exchange"), filed with the Securities and Exchange Commission ("SEC" or "the Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ and Rule 19b-4² thereunder to permit a closing rotation in equity options to be announced after 4:02 p.m. The proposed rule change was published for comment in the **Federal Register** on May 12, 1998.³ No comments were received.

On July 9, 1998, the Amex submitted Amendment No. 1 to the proposed rule change.⁴ This order approves the proposal and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

On May 14, 1997, the Exchange received approval to move the close of equity and narrow-based index options trading from 4:10 p.m. to 4:02 p.m.⁵ This change was prompted by improvements in dissemination of closing prices in the underlying securities, the limited ability of public customers to react as quickly as professional traders to news announcements in the last ten minutes of trading, and the difficulties experienced by options specialists and registered traders trying to make orderly options markets without the ability to hedge or otherwise offset market risk with transactions in the underlying stock. Following receipt of approval, Rule 1 was amended to reflect this change to 4:02 p.m. The Amex states that the provision that permits a closing rotation⁶ to be initiated due to unusual market conditions was severely limited inadvertently when the rule was changed to require that notice of the closing rotation had to be publicly disseminated before 4:02 p.m. As currently written, the rule gives Floor Officials only two minutes to assess an unusual market condition, determine whether it is appropriate to have a closing rotation, and disseminate the news of the rotation to the public.

The Amex proposes to amend Exchange Rule 1 to permit a closing rotation in equity and narrow-based

index options to be announced after 4:02 p.m., provided such a rotation does not begin sooner than five minutes after it is announced.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5).⁷ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market, and in general, to further investor protection and the public interest.

The Commission believes that it is reasonable for the Exchange to amend its rules to provide Floor Officials with more than two minutes to assess an unusual market condition, determine whether it is appropriate to have a closing rotation, and disseminate the news of the rotation to the public.⁸ The Commission notes that the Chicago Board Options Exchange ("CBOE"), the Pacific Exchange ("PCX"), and the Philadelphia Stock Exchange ("PHLX") permit trading rotation notice to be given after the close of trading.⁹

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Amendment clarified the filing's description of a prior rule change and the scope of the proposed rule change. For these reasons, the Commission finds good cause for approving Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 39959 (May 5, 1998), 63 FR 26231.

⁴ See Letter from Scott Van Hatten, Legal Counsel, Amex, to Michael Walinskas, Deputy Associate Director, SEC, dated July 9, 1998 ("Amendment No. 1"). Amendment No. 1 clarified that the Exchange had received approval to move the close of narrow-based index options trading from 4:10 p.m. to 4:02 p.m., as set forth in Securities Exchange Act Release No. 38640 (May 14, 1997), 62 FR 28081 (May 22, 1997). Amendment No. 1 also amended the filing to permit the announcement of closing rotations in narrow-based index options, in addition to equity options, after 4:02 p.m.

⁵ Securities Exchange Act Release No. 38640 (May 14, 1997), 62 FR 28081 (May 22, 1997).

⁶ A closing rotation is a trading procedure to determine appropriate closing prices or quotes for each series of options on an underlying stock.

⁷ 15 U.S.C. 78f(b)(5).

⁸ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ See CBOE Rule 6.2, Interpretations and Policies .02; PCX Rule 6.64, Commentary .01; and PHLX Rule 1047, Commentary .03.