The Fund states that, in adopting the Distribution Policy, the Board considered that the Distribution Policy provides a steady return to the Fund's shareholders and, during periods when its per share NAV is increasing, a means for the shareholders to receive, on a periodic basis, some of the appreciation in the value of their shares. The Board also considered empirical evidence that, in many cases, market discounts to NAVs have narrowed upon adoption of similar distribution policies by other closed-end funds. The Board has set the annualized Rolling Distribution Rate for fiscal year 1998 at 9%.

3. The Fund requests relief to permit it, so long as it maintains in effect the Distribution Policy, to make up to four capital gains distributions (as defined in section 852(b)(30(C) of the Internal Revenue Code of 1986, as amended (the ''Code'')) in any one taxable year.

**Applicant's Legal Analysis**

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital grains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distributions, as defined in section 852(b)(3)(C) of the Code. Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. The Fund asserts that the limitation on the number of net long-term capital gains distributions in rule 19b–1 prohibits the Fund from including available net long-term capital gains in certain of its fixed quarterly distributions. As a result, the Fund states that it must fund these quarterly distributions with returns of capital (to the extent net investment income and net realized short-term capital *gains are insufficient to cover a* quarterly distribution). The Fund further asserts that, in order to distribute all of its long-term capital gains within the limits permitted by rule 19b–1, the Fund may be required to make certain of its quarterly distributions in excess of the total annual amount called for by the Distribution Policy or retain and pay taxes on the excess amount. The Fund asserts that the application of rule 19b–1 to the Fund's Distribution Policy may create pressure on the investment adviser to limit the realization of long-term capital grains based on considerations unrelated to investment goals.

3. The Fund submits that the concerns underlying section 19(b) and rule 19b–1 are not present in the Fund's situation. One of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. The Fund states that its Distribution Policy has been fully and repeatedly described in the Fund's periodic communications to its shareholders. The Fund states that, in accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution accompanies each distribution (or the confirmation of reinvestment under the Fund's dividend reinvestment plan). In addition, a statement showing the amount and source of each quarterly distribution during the year is included with Fund's IRS Form 1099–DIV report sent to each shareholder who received distributions during the year (including shareholders who have sold shares during the year).

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper distribution practices including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming dividend (''selling the dividend''), when the dividend results in an immediate corresponding reduction in NAV and is, in effect, a return of the investor's capital. The Fund submits that this concern does not arise with regard to closed-end management investment companies, such as the Fund, which do not continuously distribute their shares. Applicant further asserts that if the Fund makes a rights offering to its shareholders, the rights offering will be timed so that issuable upon exercise of the right will be issued only in the six week period immediately following the record date for the declaration of a dividend. Thus, the abuse of selling the dividend cannot occur as a matter of timing.

5. The Fund states that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. The Fund asserts, however, that it will continue to make quarterly distributions regardless of what portion of the distribution is composed of long-term capital gains.

6. Section 6(c) of the Act provides that the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder 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. For the reasons stated above, the Fund believes that the requested relief satisfies this standard.

**Applicant's Condition**

The Fund agrees that the order granting the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Fund of its shares other than: (i) A rights offering with respect to the Fund's common stock to holders of the Fund's common stock, in which (a) shares are issued only within the six-week period immediately following the record date of a quarterly dividend, (b) the prospectus for the rights offering makes it clear that shareholders exercising the rights will not be entitled to receive such dividend, and (c) the Fund has not engaged in more than one rights offering during any given calendar year; or (ii) an offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of the Fund; unless the Fund has received from the staff of the SEC written assurance that the order will remain in effect.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–20690 Filed 8–3–98; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–23365; 812–10710]**

## MEMBERS Mutual Funds and CIMCO Inc.; Notice of Application July 29, 1998

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

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit them to enter into and materially amend subadvisory contracts without obtaining shareholder approval.

**APPLICANTS:** MEMBERS Mutual Funds (the ''Trust'') and CIMCO Inc. (the ''Manager'').

**FILING DATES:** The application was filed on June 20, 1997, and amended on May 28, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 24, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers' request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 5910 Mineral Point Road, Madison, WI 53705–0391, Attention: Faye Patzner, Esq.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Christine Y. Greenlees, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

### Applicants' Representations

1. The Trust, a Delaware business trust, is an open-end management investment company registered under the Act. The Trust currently is comprised of seven separate series (each, a ''Fund'' and collectively, the ''Funds''), each of which has its own investment objective and policies. The Manager, registered under the Investment Advisers Act of 1940 (''Advisers Act''), provides overall investment management to the Trust and each Fund, subject to the supervision of the Board of trustees of the trust (the ''Board''), pursuant to an investment management agreement (the ''Management Agreement''). Currently, the Manager provides specific portfolio management for five of the Funds, and one or more subadvisers (''Subadvisers'') provide specific portfolio management for two of the Funds. Each Subadviser is registered under the Advisers Act.

2. Under the Management Agreement, the Manager monitors the performance of each Subadviser and of a Fund's portfolio and reallocates Fund assets among Subadvisers, or recommends to the Board that a Fund employ or terminate particular Subadvisers. Each Subadviser recommended by the Manager is selected and approved by the Board, including a majority of the trustees who are not ''interested persons'' of the Manager or the Trust (the ''Independent Trustees''). The Manager also provides the Trust and the Funds with overall administrative services. Each Fund pays the Manager a fee based on the Fund's average net assets.

3. Under subadvisory agreements between the Manager and the Subadvisers (''Subadvisory Agreements'') and subject to general supervision by the Manager and the Board, each Subadviser makes the specific investment decisions for the Fund it advises, and has discretionary authority to invest all or a portion of the assets of that Fund. No Subadviser has any broader supervisory, management, or administrative responsibilities with respect to the Trust or a Fund. The Manager pays the Subadvisers out of the fees it receives from the Trust.

4. Applicants seek an exemption to permit Subadvisers selected by the Manager and approved by the Board to serve as portfolio managers without shareholder approval.[1] Shareholder approval is, and will continue to be, required for any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Manager, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser'').

### 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 under the Act 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 authorizes the Commission to exempt any person, security or transaction from any provision of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants request relief under section 6(c) from section 15(a) of the Act and rule 18f–2 under the Act. For the reasons discussed below, applicants believe that the requested relief meets the standard of section 6(c).

3. Applicants assert that the Trust's investors rely on the Manager for investment management, and expect the Manager to select one or more Subadvisers best suited to achieve a Fund's investment objectives. Applicants represent that the Manager has substantial experience in performing these functions. Applicants submit that, consequently, from the perspective of an investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants thus contend that, without the requested relief, the Trust may be precluded form promptly and timely employing Subadvisers best suited to the needs of the Funds. Applicants also note that the Management Agreement will remain fully subject to the requirements of section 15 of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

### Applicants' Conditions

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

1. The Manager will provide management and administrative services to the Funds and, subject to the review and approval of the Board, will: (i) set the overall investment strategies of the Funds; (ii) recommend Subadvisers; (iii) allocate and, when appropriate, reallocate, the assets of the Funds among Subadvisers in those cases where a Fund has more than one Subadviser; and (iv) monitor and evaluate the investment performance of the Subadvisers, including their compliance with the investment objectives, policies, and restrictions of the Funds.

2. Before any 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

[1] Applicants request that the relief also apply to future Funds, and to all registered open-end investment companies or series of such companies that (i) are now, or in the future, advised by Manager of any entity controlling, controlled by, or under common control with the Manager; (ii) use one or more Subadvisers, and (iii) comply with the terms and conditions in the application. All existing investment companies that currently intend to rely on the order have been named as applicants.

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 4 below, by the sole initial shareholder(s) before offering shares of such Fund to the public.

3. Within 90 days of the hiring of any Subadviser, the Manager will furnish shareholders of the affected Fund with all information about the Subadviser that would be included in a proxy statement. The Manager will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Trust will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the ''manager of managers'' approach described in the application. The prospectus will prominently disclose that the Manager has the ultimate responsibility for the investment performance of the Fund due to its responsibility to oversee Subadvisers and recommend their hiring, termination and replacement.

5. No director, trustee, or officer of the Trust or the Manager will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer), any interest in a Subadviser except for: (a) ownership of interests in the Manager or any entity that controls, is controlled by, or under common control with the Manager, or (b) or ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either a Subadviser or controls, is controlled by, or is under common control with a Subadviser.

6. The Manager will not enter into Subadvisory Agreements on behalf of a Fund with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

7. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

8. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of meetings of the Board, that the change of Subadvisers is in the best interest of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or Affiliated Subadviser derives an inappropriate advantage.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–20750 Filed 8–3–98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [63 FR 39916, July 24, 1998]

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, N.W., Washington, D.C.

**DATE PREVIOUSLY ANNOUNCED:** July 24, 1998.

**CHANGE IN THE MEETING:** Cancellation of Meeting.

The closed meeting scheduled for Friday, July 31, 1998, at 10:00 a.m., has been cancelled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: July 31, 1998.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–20947 Filed 7–31–98; 3:47 pm]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40271; File No. SR–CHX–98–18]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Exchange's Withdrawal of Capital Provisions

July 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 1998, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

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

The Exchange proposes to amend Article II, Rule 6(b) of the Exchange's rules relating to the Exchange's Withdrawal of Capital provisions.

#### 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 CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Article II, Rule 6(b) of the Exchange's rules in order to limit the applicability of the Exchange's Withdrawal of Capital provisions to member firms for which the Exchange is the Designated Examining Authority (''DEA''). The Exchange's Withdrawal of Capital provisions limit the ability of a partner in a member firm to withdraw capital from the firm. Currently, this requirement applies to both member firms for which the Exchange is the DEA as well as firms subject to examination by a self-regulatory organization (''SRO'') other than the Exchange if the member's DEA does not have a comparable rule. The proposed rule change would eliminate this requirement for all firms for which the Exchange is not the DEA.

The Exchange does not believe that, given the current regulatory scheme, it is necessary to review and analyze the rules of other SROs to determine whether such rules are comparable to the Exchange's rule on this particular issue. All other SROs have rules that have been approved by the SEC and that