Travelers Insurance and Travelers L & A including the consideration to be paid and received, as described in the application, are reasonable and fair and do not involve overreaching on the part of any person concerned. In addition, Applicants submit that the proposed substitutions are consistent with the general purposes of the Act.

12. Applicants maintain that the terms of the proposed transactions, including the consideration to be paid and received by each Portfolio or Fund involved, are reasonable, fair and do not involve overreaching principally because the transactions do not cause owners' interests under a Contract to be diluted and because the transactions will conform with all but one of the conditions enumerated in Rule 17a–7. The proposed transactions will take place at relative net asset value with no change in the amount of any Contract owner's Contract or cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Even though Travelers Insurance, Travelers L & A, TSF, TST and CitiStreet may not rely on Rule 17a–7, Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

13. Applicants state that the board of directors of TSF and CitiStreet and the board of trustees of TST have adopted or will adopt procedures, as required by paragraph (e)(1) of Rule 17a–7, pursuant to which the Portfolios or Funds of each may purchase and sell securities to and from their affiliates. Travelers Insurance, Travelers L & A, TSF, TST and CitiStreet will carry out the proposed substitutions in conformity with all of the conditions of Rule 17a–7 and TSF's, TST's and CitiStreet's procedures thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. Nevertheless, the circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to each Portfolio of TSF and the affected Funds of TST and CitiStreet from overreaching that Rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, because of the circumstances surrounding the proposed Travelers Insurance and Travelers L & A substitutions, TSF, TST, CitiStreet and the other affected Portfolios could not ''dump'' undesirable securities on TST or TSF, or retain its desirable securities for themselves. Nor can Travelers Insurance and Travelers L & A effect the proposed transactions at a price that is disadvantageous to any TSF Portfolio, TST Fund or CitiStreet Fund. Although the transactions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each Portfolio or Fund involved valued in accordance with the procedures disclosed in the respective Management Company's registration statement and as required by Rule 22c–1 under the Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, the board of directors of TSF and the board of trustees of TST will subsequently review these proposed substitutions and make the determinations required by paragraph (e)(3) of Rule 17a–7.

14. Applicants state that the proposed redemption of shares of Putnam Diversified, Smith Barney Income, Montgomery Growth, OCC Equity, Diversified Bond and Global Income is consistent with the investment policy of each, as these are recited in its registration statement, provided that the shares are redeemed at their net asset value in conformity with Rule 22c–1 under the Act.

15. Applicants state that the sale of shares of Quality Bond, AIM Capital, and TST Government as contemplated by the proposed substitution, is consistent with the investment policy of each, as recited in its registration statement, provided that (1) the shares are sold at their net asset value, and (2) the portfolio securities are of the type and quality that the affected portfolios has acquired with the proceeds from share sales had the shares been sold for cash. To assure that the second of these conditions is met, Travelers Insurance and Travelers L & A will examine the portfolio securities being offered to Quality Bond, AIM Capital, and TST Government and accept only those securities as consideration for shares that it would have acquired for in a cash transaction.

16. Applicants assert that the proposed substitutions, as described herein, are each consistent with the general purposes of the Act as stated in the Findings and Declaration of Policy in section 1 of the Act. The proposed transactions do not present any of the conditions or abuses that the Act was designed to prevent. In particular, section 1(b)(2) and (3) of the Act state, among other things, that the national public interest and the interest of investors are adversely affected ''when investment companies are organized, operated, managed, or their portfolio securities are selected in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, * * * or in the interests of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders; * * * when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities.'' Applicants assert that the conditions found in Rule 17a–7 prevent the abuses described in section 1(b)(2) and (3) of the Act. Applicants further assert that, for all the reasons stated in section IV of the application, the abuses described in section 1(b)(2) and (3) of the Act will not occur in connection with the proposed substitutions.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16061 Filed 6–25–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–25618; 812–12662]**

## AXP Partners Series, Inc., et al.; Notice of Application

June 19, 2002.

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

**ACTION:** Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act, under section 6(c) for an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e–1 under the Act, and under section 10(f) of the Act for an exemption from section 10(f).

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between the broker-dealer and a portion of the investment company's

portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by an investment adviser or an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3–1 under the Act.

**APPLICANTS:** AXP Partners Series, Inc., AXP Partners International Series, Inc., AXP Strategy Series, Inc. (each, an ''AXP Fund,'' and each underlying series, an ''AXP Portfolio''), AXP Variable Portfolio—Partners Series, Inc. (the ''Life Fund,'' and the underlying series, the ''Life Portfolio'') (the AXP Funds and the Life Funds, the ''Funds'') (the AXP Portfolios and the Life Portfolio, the ''Portfolios''), American Express Financial Corporation (''AEFC'') and IDS Life Insurance Company (''IDS Life'').

*Filing Dates:* The application was filed on October 12, 2001 and amended on June 19, 2002.

*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 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 July 15, 2002, 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 Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Funds, 901 Marquette Avenue South, Suite 2810, Minneapolis, MN 55402–3268. AEFC and IDS Life, 200 AXP Financial Center, Minneapolis, MN 55474.

**FOR FURTHER INFORMATION CONTACT:** John L. Sullivan, Senior Counsel, at (202) 942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

## Applicants' Representations

1. Each Fund is a Minnesota corporation registered under the Act as an open-end management investment company. The Funds offer several Portfolios with different investment objectives and policies. Shares of the Life Portfolio are sold to IDS Life and its subsidiaries as a funding option for variable annuity contracts and variable life insurance policies issued by IDS Life and its subsidiaries.

2. AEFC is a Delaware corporation registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the AXP Portfolios. A subsidiary of AEFC, IDS Life is a stock life insurance company organized under the laws of Minnesota and manages the Life Portfolio. IDS Life has entered into an advisory agreement with AEFC pursuant to which AEFC furnishes investment advice to the Life Portfolio.[1] The Adviser allocates the assets of each Portfolio among subadvisers (each, a ''Subadviser''). Each Subadviser has discretion to purchase and sell securities for its portion of a Portfolio in accordance with that Portfolio's objectives, policies and restrictions. As compensation for its services, each Subadviser is paid a fee by AEFC out of the management fee received by AEFC from the Portfolios.

3. Applicants request relief to permit: (a) Any broker-dealer registered under the Securities Exchange Act of 1934 that itself serves as a Subadviser to, or is an affiliated person of a Subadviser to a Portfolio (the broker-dealer, an ''Affiliated Broker-Dealer'; the Subadviser, an ''Affiliated Subadviser'') to engage in principal transactions with a portion of the Portfolio (''Portion'') that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or the Affiliated Subadviser (the Subadviser, an ''Unaffiliated Subadviser'; the Portion, an ''Unaffiliated Portion'')[2]; (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to use such brokerage services, without complying with rule 17–1(b) and (d) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or a person of which an Affiliated Subadviser is an affiliated person (''Affiliated Underwriter''); (d) a portion of the Portfolio advised by an Affiliated Subadviser (''Affiliated Portion'') to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 under the Act, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion; and (e) an Unaffiliated Portion to acquire securities issued by an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser engaged in securities-related activities (''Securities Affiliate''), subject to the limits in rule 12d3–1 under the Act.

4. Applicants request that the requested relief apply to the Funds and any existing or future registered management investment company or its series advised by (a) AEFC or any entity controlling, controlled by, or under common control with AEFC, and (b) at least one Unaffiliated Subadviser registered under the Advisers Act or exempt from registration (such investment company or its series included in the term ''Portfolio''). Applicants also request that the relief apply to any existing or future entity that serves as an Affiliated Subadviser, Affiliated Broker-Dealer or Affiliated Underwriter with respect to a Portfolio relying on the order. Any investment company that currently intends to rely on the order is named as an applicant. Any existing or future entity that relies on the order in the future will comply with the terms and conditions of the application.

## Applicants' Legal Analysis

### *A. Principal Transactions Between an Unaffiliated Portion and an Affiliated Broker-Dealer*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person (''second-

[1] For purposes of the application, the term ''Adviser'' is used to mean AEFC, with respect to the AXP Funds and the AXP Portfolios, and IDS Life and AEFC jointly, with respect to the Life Fund and the Life Portfolio.

[2] The terms ''Unaffiliated Subadviser,'' ''Subadviser,'' and ''unaffiliated Portion'' include the Adviser and the Portion directly advised by the Adviser, respectively, provided that the Adviser manages its Portion independently of the Portions managed by other Subadvisers to the Portfolio, and the Adviser does not control or influence any other Subadviser's investment decisions for its Portion the Adviser does not currently directly advise nay Portion of any Portfolio.

tier affiliate''), promoter, or principal underwriter. Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Portfolio, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus a second-tier affiliate of a Portfolio, including the Unaffiliated Portion. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Portion of a Portfolio with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion as a result of the fact that an Affiliated Subadviser is the Subadviser to another Portion of the same Portfolio. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser to a Portion) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion, or any principal underwriter, promoter, officer, director or employee of the Portfolio.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if 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.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own financial advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect financial interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an Unaffiliated Portion in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the value of the assets allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Portion would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further submit that the Adviser's power to dismiss a Subadviser or to change the portion of a Portfolio's assets allocated to a Subadviser reinforces the Subadviser's incentive to maximize the investment performance of its own Portion.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a Portion. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants represent that the Adviser does not dictate brokerage allocation or investment decisions nor does it have the contractual right to do so, except with respect to a Portion advised directly by the Adviser. Applicants contend that, in managing a Portion, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Portfolio involved, since each Unaffiliated Subadviser is required to manage its Portion in accordance with the investment objectives and policies described in the registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Portfolio achieving best price and execution on its principal transactions, while giving rise to none of the abuses that the Act was designed to prevent.

*B. Payment of Brokerage Compensation by an Unaffiliated Portion to an Affiliated Broker-Dealer*

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the ''usual and customary broker's commission'' for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule during the preceding quarter complied with [the company's rule 17e–1] procedures. Rule 17e–1(d) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17(e) and rule 17e–1 to the extent necessary to permit an Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Portion, without complying with the requirements of rule 17e–1(b) and (d). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another Portion of the same Portfolio. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of serving as Subadviser to a Portion) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion, or any principal underwriter, promoter, officer, director or employee of the Portfolio.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that because the financial interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair compared to those charged by other brokers in connection with comparable transactions involving similar securities during a comparable period of time. Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

*C. Purchases of Securities From Offerings With Affiliated Underwriters*

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser or employee of the company, or an affiliated person of any of those persons. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser to a Portfolio, although under contract to manage only a Portion, is considered an investment adviser to the Portfolio itself, not just the Portion it manages. Therefore, applicants believe that all purchases of securities by the Subadviser on behalf of the Portfolio from an underwriting syndicate, a principal underwriter of which is another Subadviser to the same Portfolio or a person of which such other Subadviser is an affiliated person, would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Portfolio. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Subadviser to a Portion) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion, or any principal underwriter, promoter, officer, director or employee of the Portfolio. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Portfolios because, in part, a decision by the Subadviser to a Portion to purchase securities from an underwriting syndicate, a principal underwriter of which is a Subadviser to a different Portion of the same Portfolio or a person of which such other Subadviser is an affiliated person, involves no potential for ''dumping.'' In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers to the same Portfolio, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

*D. Purchases of Securities of Securities Affiliates by an Unaffiliated Portion*

1. Section 12(d)(3) of the Act, in relevant part, generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if specified conditions are met. One of these conditions, paragraph (c) of rule 12d3–1 generally provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment company's investment adviser, promoter, or principal underwriter.

2. Applicants state that each Subadviser to a portion of a Portfolio is considered to be an investment adviser to the entire Portfolio. Thus, an Unaffiliated Portion would not be able to purchase securities issued by a Securities Affiliate (which would include another Subadviser to the same Portfolio or an affiliated person of that Subadviser) in reliance on rule 12d3–1 because of paragraph (c). Applicants request relief under section 6(c) from section 12(d)(3) to allow any Unaffiliated Subadviser for an Unaffiliated Portion to acquire securities issued by a Securities Affiliate within the limits of rule 12d3–1. The requested relief would only apply where a Securities Affiliate is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion within the meaning of rule 12d3–1(c) solely because an Affiliated Subadviser is the Subadviser to another portion of the same Portfolio.

3. Applicants state that the proposed transactions do not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment decisions for the assets allocated to its portion of the Portfolio. Furthermore, applicants submit that prohibiting an Unaffiliated Portion from purchasing securities issued by a Securities Affiliate could harm the interests of a Portfolio's shareholders by preventing the Unaffiliated Subadviser from achieving optimal investment results.

**Applicants' Conditions**

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

1. Each Portfolio relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Affiliated Underwriter or Securities Affiliate (except by virtue of serving as Subadviser to a Portion) will be an affiliated person or a second-tier affiliate of the Adviser, any Unaffiliated Subadviser, or any principal underwriter, promoter, officer, director or employee of a Portfolio.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3–1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16062 Filed 6–25–02; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46086; File No. SR–Amex–2002–39]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Revise and Clarify the Income Based Original Listing Standard

June 18, 2002.

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 April 25, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval to the proposed rule change.

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

The Amex proposes to amend Section 101 of the Amex Company Guide to revise and clarify its income-based original listing standard. The text of the proposed rule change appears below. New language is italicized.

* * * * *

**CRITERIA FOR ORIGINAL LISTING**

**Section 101. GENERAL**

No Change.

(a) REGULAR LISTING CRITERIA

1. Size—Stockholders' equity of at least $4,000,000.

2. Income—Pre-tax income *from continuing operations* of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

Additional criteria applicable to various classes of securities and issuers are set forth below. Applicants should also consider the policies regarding conflicts of interest, independent directors and voting rights described in §§ 120–125.

* * * * *

### 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 Amex 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 III below. The Exchange 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*

I. Purpose

Section 101 of the Amex Company Guide contains a number of quantitative guidelines under which listing applicants are evaluated. Pursuant to Section 101(a)(2) of the Amex Company Guide, a listing applicant is subject to a pre-tax income guideline of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.[3] The Amex represents that this income guideline is intended to provide a measurement of an applicant's financial performance in evaluating its listing eligibility, but makes no provision for exclusion of discontinued operations, extraordinary items or the cumulative effect of changes in accounting principles. Because discontinued operations, extraordinary items, or the cumulative effect of changes in accounting principles are not incurred in the ordinary course of business, the Exchange does not believe such items are relevant to an evaluation of an issuer's true financial situation and performance. Accordingly, the Exchange proposes to amend Section 101(a)(2) of the Amex Company Guide to use the term ''pre-tax income from continuing operations'' instead of ''pre-tax income.'' The Exchange represents that compliance with this term would be determinable in accordance with Generally Accepted Accounting Principals and, therefore, would be a transparent standard.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5) of the Act[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange believes that the proposed change to the income-based

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

[2] 17 CFR 240.19b–4.

[3] An applicant can also qualify for listing based on compliance with one of the other listing standards contained in Section 101.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).