

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the Exchange.

The application refers only to the Securities set forth above and would not affect the Company's obligations, by reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, to continue to file reports with the Commission under Section 13 of the Act with respect to its other issues.

Any interested person may, on or before, April 1, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-6550 Filed 3-17-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23737; 812-111532]

Bankers Trust Company; Temporary Order

March 12, 1999.

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

ACTION: Temporary order under section 9(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY: Applicant Bankers Trust Company has received a temporary order exempting it and entities of which it is or becomes an affiliated person from section 9(a) of the Act, with respect to a cooperation and plea agreement entered into on March 11, 1999 between applicant and the U.S. Attorney for the Southern District of New York, until the Commission takes final action on an application for a permanent order or, if earlier, May 11, 1999.

Filing Date: The application was filed on March 12, 1999.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street,

N.W., Washington, D.C. 20549; Applicant, One Bankers Trust Plaza, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Assistant Director, at (202) 942-0693, Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

Applicant's Representations

1. Applicant, a New York banking corporation, is the principal bank subsidiary of Bankers Trust Corporation, a New York corporation that, together with its subsidiaries and affiliates, performs a wide range of banking and financial services worldwide. Applicant is the investment adviser or subadviser to numerous investment companies registered under the Act ("funds"). Applicant is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act"). Certain entities of which applicant is an affiliated person ("Covered Entities") and which are registered under the Advisers Act also serve as investment advisers or subadvisers to funds.¹ Applicant and Covered Entities currently advise or subadvise funds having aggregate net assets in excess of \$60 billion.

2. Applicant acts as custodian and transfer agent for certain funds advised by it or by the Covered Entities. Applicant also acts as custodian (but not transfer agent) for certain other funds. Applicant is registered as a transfer agent under the Securities Exchange Act of 1934.

3. On March 11, 1999, the U.S. Attorney for the Southern District of New York filed a three-count felony information (the "Information") in the U.S. District Court for the Southern District of New York alleging violations of 18 U.S.C. 1005. The Information charges applicant with making false entries on its books and records as a result of the conduct of certain employees in 1994-1996 in applicant's processing services businesses. The conduct involved the transfer to reserve accounts and to income of aged credit items that should have been paid to

¹ Upon consummation of the pending acquisition of the parent company of applicant by Deutsche Bank AG, Covered Entities also would include entities of which as a result of the acquisition applicant becomes an affiliated person.

customers or other third parties, or paid to state abandoned property authorities.

4. On March 11, 1999, applicant entered a plea of guilty to the charges in the Information pursuant to a written cooperation and plea agreement ("Cooperation and Plea Agreement.")² In the Cooperation and Plea Agreement, applicant agreed to pay a fine of \$60 million and to place the amount in escrow pending sentencing. The Cooperation and Plea Agreement provides that sentencing will be adjourned to on or before May 12, 1999.

Applicant's Legal Analysis

1. Section 9(a) of the Act, in relevant part, prohibits a person from serving or acting in the capacity of an investment adviser, principal underwriter, or depositor for any registered investment company if the person has been (i) convicted of any felony or misdemeanor arising out of the person's conduct, among other things, as an underwriter, broker, dealer, investment adviser, or transfer agent, or (ii) enjoined from acting, among other things, as a principal underwriter, investment adviser, or transfer agent. Applicant does not concede that the Cooperation and Plea Agreement would disqualify it under section 9(a) of the Act. In order to resolve any uncertainty, however, applicant seeks a temporary order exempting it and the Covered Entities from section 9(a) of the Act as it relates to the Cooperation and Plea Agreement.

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of applicant has been such as not to make it against the public interest or the protection of investors to grant the application.

3. Applicant states that the prohibitions of section 9(a) as applied to it and the Covered Entities would be unduly and disproportionately severe. Applicant states that, if the exemption were not granted, the prohibition of section 9(a) would have a devastating impact on the businesses of applicant and the Covered Entities. Applicant asserts that those businesses were not involved in the matters underlying the Corporation and Plea Agreement.

4. Applicant believes that the inability of applicant and the Covered Entities to provide investment advisory services would disrupt services to the funds and

² Applicant has agreed to promptly file a copy of the Information and the Cooperation and Plea Agreement as an amendment to this application.

could operate significantly to the detriment of the financial interests of the funds and their shareholders. Applicant and the Covered Entities will make presentations to the boards of directors of the funds they advise or subadvise regarding the Cooperation and Plea Agreement and the reasons they believe relief pursuant to section 9(c) is appropriate. Applicant has undertaken to provide those funds with all information concerning the Cooperation and Plea Agreement and its application necessary for those funds to fulfill their disclosure and other obligations under federal securities laws.

5. Applicant also asserts that its conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicant states that neither applicant nor any Covered Entity has ever previously applied for an exemption pursuant to section 9(c) of the Act. Applicant also states that the matters underlying the Cooperation and Plea Agreement are unrelated to applicant's or Covered Entities' investment advisory activities.

6. Applicant states that the Cooperation and Plea Agreement relates to books and records violations involving payments by applicant as custodian or paying agent or in performing other processing services. Applicant states that, although it has been unable to identify all persons to whom it improperly failed to make payments, none of the identified persons were funds, and none of the relevant payments by applicant as paying agent were on behalf of fund issuers. Applicant asserts that it has not been able to identify any fund client of applicant's custody services or any fund shareholder affected by applicant's transfer agent services as having been affected by the matters giving rise to the Cooperation and Plea Agreement.

7. Applicant states that the former employees of applicant who were identified by applicant as having been responsible for the matters underlying the Cooperation and Plea Agreement ("Identified Former Employees") are no longer employed by applicant or any Covered Entity. Applicant also states that, since 1996, applicant has implemented steps designed to prevent future violations of applicable laws and regulations relating to its handling of payments in its capacity as custodian, paying agent, benefit plan agent and similar roles. Applicant states that these steps have included an entirely new senior management team that assumed responsibility in 1997 for the business out of which the Cooperation and Plea

Agreement arose; implementation by applicant of a formal "Abandoned Property and Escheatment Policy" and appointment of an Abandoned Property Officer; and an extensive effort to research and distribute any moneys involved in the transactions to the rightful owner of the proper abandoned property authority.

Applicant's Conditions

Applicant agrees that the requested order will be subject to the following conditions:

1. The application and any exemption issued shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations or enforcement actions pursuant to the Federal securities laws, or the consideration by the Commission of any application for exemption from statutory requirements, including without limitation, the consideration of applicant's contemplated request for a permanent exemption pursuant to section 9(c) from the provisions of section 9(a) of the Act, or the revocation, removal or extension of this temporary exemption or any temporary exemption granted in connection with an application for a permanent order.

2. Neither applicant nor any Covered Entity will employ any of the Identified Former Employees, or any persons who are subsequently identified as having been responsible for the matters underlying the Cooperation and Plea Agreement, in any capacity without first making further application to the Commission pursuant to section 9(c).

Temporary Order

The Division has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicant, finds, in accordance with 17 CFR 200.30-5(a)(7), that it appears that (i) the prohibitions of section 9(a), as applied to applicant and Covered Entities, may be unduly or disproportionately severe, (ii) applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption, and (iii) granting the temporary exemption would protect the interests of the investment companies served by applicant and the Covered Entities by allowing time for the orderly consideration of an application for permanent relief.

Accordingly, *it is hereby ordered*, under section 9(c), that applicant and the Covered Entities are granted a temporary exemption from the

provisions of section 9(a), effective forthwith, solely with respect to the Cooperation and Plea Agreement, subject to the conditions in the application, until the Commission takes final action on an application for a permanent order or, if earlier, May 11, 1999.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-6553 Filed 3-17-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41151; File No. SR-NYSE-99-04]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 347 To Expressly Allow Employees To Bring Employment Related Claims Before the EEOC, NLRB, or State or Local Anti-Discrimination Agencies

March 10, 1999.

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 February 5, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission, ("Commission") the proposed rule change. The proposed rule change is described in Items I, II, and III 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.

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

The proposed rule change amends Exchange Rule 347, Controversies As to Employment or Termination of Employment, to expressly allow employees to bring employment related claims before the Equal Employment Opportunity Commission ("EEOC"), National Labor Relations Board ("NLRB"), or state or local anti-discrimination agencies. The text of the proposed rule change follows. New text is italicized.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.