B. Other Conditions

All of the original and conditions of the Exemption Order remain in effect. In addition, this Order imposes an additional conditions—that AZX conduct surveillance of trading of listed securities during regular trading hours to detect, among other things, potential insider trading and market manipulation. As a condition of the original Exemption Order in 1991, AZX undertook to conduct surveillance of its after-hours trading. When it began trading NNM securities during regular trading hours in 1996, AZX implemented additional surveillance procedures tailored to regular hours trading in NNM stocks. AZX has now agreed to adapt those procedures to trading in listed securities. Specifically, AZX will compare AZX auction prices and bids and offers entered into AZX with trading activity on the registered exchanges, and will monitor the effects of an order cancellation or order revision on the price of the stock on the primary exchange.

V. Conclusion

The Commission has determined that AZX will continue to qualify for a limited volume exemption from exchange registration under the Act even if it implements the changes described in this order. Subject to the conditions described above, the Commission finds that, by reason of the limited volume of transactions effected on AZX, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require AZX's registration as a national securities exchange. The Commission reserves the right to apply further conditions or rescind the exemption if circumstances change or if AZX does not operate as represented.

It is therefore ordered that AZX's Exemption Order be amended to grant AZX's amended application for exemption from registration as a national securities exchange, subject to the terms and conditions described above.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12061 Filed 5–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23828; 812–11548]

Bankers Trust Company, et al.; Notice of Application

May 7, 1999.

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

ACTION: Extension of temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF THE APPLICATION: Applicants have received an extension of a temporary order exempting them and other entities of which Bankers Trust Company (''BT'') is or becomes an affiliated person from section 9(a) of the Act, with respect to a March 11, 1999 cooperation and plea agreement between BT 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, November 8, 1999. Applicants also have requested a permanent order.

APPLICANTS: BT, Investment Company Capital Corporation (''ICCC''), BT Funds Management (International) Limited (''FMIL''), and Alex. Brown Investment Management (''ABIM'').

FILING DATES: The application was filed on March 25, 1999 and amended on April 28, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing or further extends the temporary exemption. 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 June 1, 1999 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 by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.Y., Washington, D.C. 20549–0609. Applicants: BT, One Bankers Trust Plaza, 31st Floor, New York, NY 10006; ICCC, One South Street, Baltimore, MD 21202–3220; FMIL, The Chifley Tower, 2 Chifley Square, Sydney, NSW 2000, Australia; and ABIM, 217 E. Redwood Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION, CONTACT: Rachel H. Graham, Senor Counsel at (202) 942–0583, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is an extension of a temporary order and a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. BT, a New York banking corporation, is the principal bank subsidiary of Bankers Trust Corporation (''BT Corp''), a New York corporation that, together with its affiliates and subsidiaries, performs a wide range of banking and financial services worldwide. BT, which is exempt from registration under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser or subadviser to numerous investment companies registered under the Act (''funds'').

2. ICCC, a Maryland corporation, and FMIL, an Australian corporation, are indirect wholly-owned subsidiaries of BT Corp. BT Corp indirectly owns approximately 50% of ABIM, a Maryland limited partnership. Accordingly, BT may be deemed to be under common control with ICCC, FMIL, and ABIM (each an ''Affiliated Adviser'' and, collectively, the ''Affiliated Advisers''). Each Affiliated Adviser is registered under the Advisers Act and serves as investment adviser or subadviser to various funds.

3. BT acts as administrator, custodian, transfer agent, and shareholder servicing agent for certain funds advised by it or the Affiliated Advisers. BT also acts as custodian for certain other funds. ICCC acts as transfer agent for funds advised by it or other Affiliated Advisers. BT and ICCC are registered as transfer agents under the Securities Exchange Act of 1934.

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

items that should have been paid to customers, other third parties, or state abandoned property authorities.

5. On March 11, 1999, BT pleaded guilty to the charges in the Information pursuant to a written cooperation and plea agreement (''Cooperation and Plea Agreement''). As part of the Cooperation and Plea Agreement, BT agreed to pay a $60 million fine and to place that amount in escrow pending sentencing.[1] The Cooperation and Plea Agreement provides that sentencing will be adjourned to on or before May 12, 1999.[2]

Applicants' Legal Analysis

1. Section 9(a) of the Act, in relevant part, prohibits a person and any company of which the person is an affiliated person from serving or acting as an investment adviser, principal underwriter, or depositor for any registered investment company if the person has been convicted of any felony arising out of the person's conduct as, among other things, an underwriter, broker, dealer, investment adviser, or transfer agent. Applicants do not concede that the Cooperation and Plea Agreement would disqualify BT, the Affiliated Advisers, and all other entities of which BT is or becomes an affiliated person (together with Applicants, the ''Covered Entities'') under section 9(a) of the Act. In order to resolve any uncertainty, however, Applicants seek a permanent order exempting them and all other Covered Entities from section 9(a) of the Act with respect 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, so applied to the applicant, are unduly or disproportionately severe or that the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the application.

3. On March 12, 1999, the Covered Entities received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Cooperation and Plea Agreement (''Temporary Order'') (Investment Company Act Release No. 23737). The Temporary Order stated that it would expire when the Commission took final action on an application for a permanent order or, if earlier, May 11, 1999.

4. As noted above, Applicants seek a permanent order exempting the Covered Entities from section 9(a) with respect to the Cooperation and Plea Agreement.[3] Applicants also seek an extension of the Temporary Order if the requested permanent order is not granted before the Temporary Order expires.

5. Applicants assert that the prohibitions of section 9(a) as applied to the Covered Entities would be unduly and disproportionately severe. Applicants contend that, if the requested exemption is not granted, the section 9(a) prohibition would have a devastating impact on their investment advisory businesses. Applicants assert that those businesses were not involved in the matters underlying the Cooperation and Plea Agreement.[4]

6. Applicants believe that their inability to provide investment advisory services could impair significantly the financial interests of the funds they advise or subadvise and of the funds' shareholders. Applicants state that they have distributed or will distribute, to the boards of directors of the funds they advise and to the advisers of the funds they subadvise, written materials regarding the Cooperation and Plea Agreement and the reasons applicants believe relief from section 9(a) is appropriate. Applicants also state that they have offered, or will offer, to meet in person with the boards and advisers to discuss those materials. Further, Applicants will undertake to provide the funds with all information concerning the Cooperation and Plea Agreement and this application necessary for the funds to fulfill their disclosure and other obligations under the federal securities laws.

7. Applicants assert that their conduct has been such as not to make it against the public interest or the protection of investors to grant this application. Applicants contend that the Cooperation and Plea Agreement relates to books and records violations involving payments by BT in performing various processing services. Applicants state that BT has not been able to identify any fund client of its custody services or any fund shareholder affected by its transfer agent services who has been affected by the matters giving rise to the Cooperation and Plea Agreement. Applicants also state that, although BT has been unable to identify all persons to whom it improperly failed to make payments, none of the identified persons are funds. Applicants acknowledge that approximately $78,000 in aged credits from BT's unit investment trust business that likely should have been escheated to one or more states was improperly transferred to BT's reserve accounts. Applicants state, however, that none of the other payments by BT as paying agent were on behalf of fund issuers.

8. Applicants state that the persons identified as having been responsible for the matters underlying the Cooperation and Plea Agreement (''Identified Former Employees'') no longer are employed by BT or any other Covered Entity. Applicants also state that, since 1996, BT has taken steps 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. In particular, Applicants note that: a new senior management team has assumed responsibility for the business out of which the Cooperation and Plea Agreement arose; BT has implemented a formal ''Abandoned Property and Escheatment Policy'' and appointed an Abandoned Property Officer; BT has hired better qualified personnel to replace the Identified Former Employees; and BT has engaged in an extensive effort to redistribute the improperly transferred moneys to their rightful owners (or, if applicable, to the proper abandoned property authority).

Applicants' Conditions

Applicants agree that any order issued on this application 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 revocation, removal, or further extension of any temporary exemption granted under the Act in connection with the application.

2. Neither applicants nor any of the other Covered Persons will employ any of the Identified Former Employees, or any persons who subsequently are identified as having been responsible for

[1] As a result of the matters underlying the Cooperation and Plea Agreement, BT also has agreed to pay a $3.5 million fine to the State of New York.

[2] Applicants have informed the staff of the Commission that the Court has rescheduled the sentencing to June 21, 1999.

[3] Applicants currently are the only Covered Entities that intend to rely upon the requested relief. Applicants note that, upon consummation of the pending merger between BT Corp and Deutsche Bank AG, Covered Entities would also include entities of which, as a result of the merger, BT becomes an affiliated person.

[4] Applicants acknowledge that, in 1976, Alex. Brown & Sons, Inc. applied for and received an exemption from section 9(a). *Alex. Brown & Sons*, Investment Company Act Rel. Nos. 9246 (Apr. 13, 1976) (notice) and 9377 (July 29, 1976) (order).

the matters underlying the Cooperation and Plea Agreement, in any capacity without first making further application to the Commission pursuant to section 9(c).

Extension of Temporary Order

The Commission has determined that it requires additional time to consider the issuance of a permanent order under section 9(c) of the Act. Accordingly,

It is ordered, under section 9(c) of the Act, that the temporary conditional order is extended until the date on which the Commission takes final action on the application for a permanent order exempting applicants and all other Covered Entities from section 9(a) of the Act or, if earlier, November 8, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12060 Filed 5–12–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41370; File No. SR–Amex–99–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange LLC, Decreasing Options Transaction Fees

May 5, 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 March 30, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 22, 1999, the Exchange filed Amendment No. 1[3] with the Commission. 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 Exchange proposes to reduce options transaction fees. The text of the proposed rule change is available at the Exchange, and at the Commission.

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 Exchange 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 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

The Amex currently imposes a transaction charge on options trades executed on the Exchange. These charges vary depending on whether the transaction involves an equity or index option, and whether the transaction is executed for a specialist or market marker account, a member firm's proprietary account, or a customer account. The Amex also imposes a charge for clearance of options trades and an options floor brokerage charge, which also depend upon the type of account for which the trade is executed. In addition, all three types of charges (transaction, options clearance, and options floor brokerage) are subject to caps on the number of options contracts subject to the charges on a given day.[4]

Currently, a transaction fee in an amount equal to either $.15, $.20, $.30, or $.40 per contract side is assessed for each customer option transaction, depending on the size of the premium involved (greater than or equal to $1, or less than $1) and the type of option (equity or index).[5] For example, a charge is incurred in an amount equal to $.30 for equity and $.40 for index option customer transactions (per contract side) when the premium is greater than or equal to $1. When the premium is less than $1, the transaction charge incurred is equal to $.15 for equity and $.20 for index option transactions (per contract side). These customer transaction charges also apply to both Long Term Equity Anticipation Securities (''LEAPS'')[6] and FLEX[7] options.

Under the revised fee schedule, these transaction charges will be determined by the number of contracts in the order. As a result, for customer market and marketable limit orders of 30 or fewer contracts, no transaction charge will apply. For customer limit orders for 30 or fewer contracts, a charge of $.10 per contract side will be assessed for both equity and index options. For all customer orders in excess of 30 contracts, a transaction charge equal to $.10 per contract side will be assessed.

The Exchange believes this reduction in transaction charges will result in an overall 50% reduction of customer transaction charges during 1999. The Exchange believes that this will provide an actual cost savings to customers of approximately $15–16 million (based on 1998 option contract volume) or approximately $12–13 million (based on 1999 budget option contract volume). The Exchange also believes that the reductions are necessary to make the Exchange's options transaction charges more competitive with other options exchanges' fees and with the cost of trading other financial instruments, and to increase the number of options orders that are routed to the Exchange. While the Exchange anticipates that other options exchanges may also cut costs to customers, it believes that the proposed reductions will increase options usage among all investors and stimulate industry-wide growth in the options business.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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

[2] 17 CFR 240.19b–4.

[3] Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Nasdaq-Amex, to Richard Strasser, Assistant Director, Division of Market Regulations, SEC, dated April 21, 1999. In Amendment No. 1, the Exchange corrected the statutory basis of the original filing to refer to Section 6(b)(4) of the Act.

[4] The current caps are set at 2000 contracts for customer trades, and 3000 contracts for member firm proprietary, specialist, and market maker traders.

[5] *See* Securities Exchange Act Release No. 38859 (July 22, 1997), 62 FR 40561 (July 29, 1997) (File No. SR–Amex–97–22).

[6] LEAPS are long-term index option series that expire from 12 to 36 months from their date of issuance. *See* Amex Rule 903C.

[7] FLEX options are customized options with individually specified terms such as strike price, expiration date and exercise style. *See* Amex Rules 900G–909G.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).