

**SECURITIES AND EXCHANGE
COMMISSION****[Release No. IC-24746; 812-12088]****TIP Funds, et al.; Notice of Application**

November 21, 2000.

AGENCY: Securities and Exchange Commission ("Commission").**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(f)(1)(A) of the Act.

Applicants: TIP Funds ("TIP Funds"), Turner Investment Partners, Inc. ("Turner"), Mercury Funds, Inc. ("Company"), Mercury Master Trust ("Trust"), and Fund Asset Management, L.P. ("FAM").

Summary of Application: Applicants request an order that would permit the Company not to reconstitute its board of directors following an acquisition of substantially all of the assets of a series of TIP Funds in order to comply with the disinterested director requirement of section 15(f)(1)(A) of the Act.

Filing Dates: The application was filed on May 3, 2000, and amended on November 13, 2000.

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 December 15, 2000, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, DC 20549-0609. Applicants, TIP Funds and Turner, 1235 Westlakes Drive, Suite 350, Berwyn, PA 19312; the Company, the Trust and FAM, 800 Scudders Mill Road, Plainsboro, NJ 08536.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942-0634 or Nadya Roytblat, Assistant Director, at (202) 942-0693 (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, N.W., Washington, DC 20549-0101, telephone (202) 942-8090.

Applicants' Representations

1. TIP Funds is a Massachusetts business trust registered under the Act as an open-end management investment company. Turner Large Cap Growth Fund ("Turner Fund") was a series of TIP Funds. Turner is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"), and served as the investment adviser to the Turner Fund until the Reorganization (as defined below).

2. The Company is a Maryland corporation registered under the Act as an open-end management investment company. The Company is comprised of seven separate series, one of which is Mercury Select Growth Fund ("Mercury Fund"). On June 19, 2000, the Mercury Fund acquired substantially all of the assets of the Turner Fund in exchange for the assumption by the Mercury Fund of substantially all of the liabilities of the Turner Fund and Class I shares of the Mercury Fund equal in value to the net asset value of the assets acquired from the Turner Fund (the "Reorganization"). The Mercury Fund invests substantially all of its assets in the Master Select Growth Portfolio ("Master Portfolio"), a series of the Trust. The Trust is a Delaware business trust registered under the Act as an open-end management investment company. FAM, an investment adviser registered under the Advisers Act, serves as the investment adviser to the Master Portfolio, and Turner serves as the subadviser.

3. Applicants state that the board of directors of the Company consists of 2 directors who are interested persons, as defined in section 2(a)(19) of the Act ("Interested Directors"), and 4 directors who are not interested persons ("Disinterested Directors"). Applicants request an order under section 6(c) of the Act exempting the Company from the provisions of section 15(f)(1)(A) of the Act with respect to the Reorganization.¹

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to receive "any amount or benefit" in connection with the sale of securities of, or sale of any

¹ Applicants request that the relief apply also to the board of trustees of the Trust, which is comprised of the same individuals as the board of directors of the Company.

interest in, such adviser (which results in the assignment of an investment advisory contract with such company) if certain conditions are met. Section 15(f)(1)(A) requires that, for a period of three years after such sale, at least 75 percent of the board of directors of an investment company (or its successor, by reorganization or otherwise) may not be "interested persons" with respect to either the predecessor or successor investment adviser to the investment company.

2. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, or rule or regulation thereunder, 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 policy and provisions of the Act. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the Commission in determining whether, or to what extent, to grant exemptive relief pursuant to section 6(c) from section 15(f)(1)(A). Applicants state that, as a result of the Reorganization, it could be argued that section 15(f)(1)(A) of the Act requires the board of directors of the Company to be comprised of at least 75% Disinterested Directors. Applicants request an order under section 6(c) of the Act for an exemption from the requirement in section 15(f)(1)(A) with respect to the Reorganization. Applicants acknowledge that the requested order would grant relief only for the period following the date on which the order is granted.

3. Applicants state that the aggregate net assets of the Company (\$2,906,843,959 as of June 16, 2000) were substantially greater than the aggregate net assets of the Turner Fund (\$45,527,647 as of June 16, 2000), making the Turner Fund's assets approximately 1.5% of the Company's assets. Applicants submit that it is appropriate for the assets of the Company as a whole, as opposed to the Mercury Fund alone, to be taken into account when considering the "substantially greater" test of section 15(f)(3)(B).

4. Applicants state that, in order to comply with section 15(f)(1)(A), the Company would have to either add two Disinterested Directors or reduce the number of Interested Directors from two

to one. The shareholders have elected all six of the Company's current directors. If the Company were to add two Disinterested Directors, the Company would not be required to seek shareholder approval to comply with section 16(a) of the Act, which requires that at least two-thirds of a fund's directors be elected by shareholders. The Company would be vulnerable to the possibility of having to unexpectedly call a shareholders' meeting that it would not otherwise have to call in the event of the death or resignation of a director. If the Company were instead to reduce the number of Interested Directors from two to one, it would reduce the size of its board by over sixteen percent. Applicants submit that reconstitution of the Company's board would serve no public interest, and may be contrary to the interests of shareholders of the Company.

5. For the reasons stated above, applicants submit that the requested relief is necessary and 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 Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-30371 Filed 11-28-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43607; File No. 265-22]

Advisory Committee on Market Information

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission Advisory Committee on Market Information.

SUMMARY: The second meeting of the Securities and Exchange Commission Advisory Committee on Market Information ("Committee") will be held on December 14, 2000, in the William O. Douglas Room, at the Commission's main offices, 450 Fifth Street, N.W., Washington, DC., beginning at 1:00 p.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265-22. Comments should be submitted to Jonathan G.

Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-0609.

FOR FURTHER INFORMATION CONTACT: Anitra Cassas, Special Counsel, Division of Market Regulation, at 202-942-0089; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-1001.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, and the regulations thereunder, the Designated Federal Official of the Committee, David S. Shillman, has ordered publication of this notice that the Committee will conduct a meeting on December 14, 2000, in the William O. Douglas Room at the Commission's main offices, 450 Fifth Street, N.W., Washington, DC., beginning at 1:00 p.m. The meeting will be open to the public. This will be the second meeting of the Committee. The purpose of this meeting will be to discuss appropriate models for consolidating and disseminating market information, and other issues relating to the public availability of market information in the equities and options markets.

Dated: November 21, 2000.

Jonathan G. Katz,
Secretary.

[FR Doc. 00-30370 Filed 11-28-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43587; File No. SR-Amex-00-23]

Self Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC Relating to Member Firm Transactions with Exchange Employees

November 17, 2000.

I. Introduction

On April 13, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend certain Amex rules relating to member firm transactions with Amex employees. On September 25, 2000, the Amex filed Amendment No. 1 to the

proposal.³ The proposed rule change was published for comment in the **Federal Register** on October 31, 2000.⁴ No comments were received on the proposal. This order approves the proposal rule change, as amended, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Amex Rule 15 (Loans by Exchange Officers) and Amex Rule 416 (Accounts of Employees of Exchange and Members), to delete Amex Rule 348 (Gratuities to Employees of Exchange), and to add new Amex Rule 417 (Transactions Involving Exchange Employees).⁵

A. Member Loans to Exchange Employees

The NASD Code of Conduct generally prohibits NASD and Amex employees from accepting loans from members, issuers, or any person with whom the NASD or Amex transacts business.⁶ Amex Rule 15 also prohibits Exchange employees from accepting loans from members without prior written approval of the Exchange, but does not specifically prohibit members from making those loans to Exchange employees.

The SEC staff has recommended that the Amex adopt a rule expressly prohibiting members from making loans to Amex employees, outside routine brokerage or banking relationships.⁷ The Amex therefore proposes to amend Amex Rule 15 to expressly provide that no member shall make a loan to an Exchange employee without prior approval of the Amex board of Governors. The Amex also proposes to adopt new Amex Rule 417(b), which prohibits members from making loans to Exchange employees outside of disclosed, routine banking and

³ Letter from Bruce Ferguson, Associate General Counsel, Legal & Regulatory Policy, Amex, to Jack Drogin, Assistant Director, Division of Market Regulation, Commission, September 25, 2000 ("Amendment No. 1"). Amendment No. 1 made a technical revision to the text of Amex Rule 417.

⁴ Securities Exchange Act Release No. 43468 (October 20, 2000), 65 FR 65034 (October 31, 2000).

⁵ The NASD filed a proposed rule change to adopt a new rule very similar to new Amex rule 471 (SR-NASD-00-50). See Securities Exchange Act Release No. 43580 (November 17, 2000).

⁶ NASD Code of Conduct, Section IX, Paragraph C.3.

⁷ See Letter from Lori Richards, Director, OCIE, SEC to Richard Syron, Chairman and Chief Executive Officer, Amex, November 6, 1998. The SEC recommendation that the Amex adopt a rule prohibiting members from making loans to Exchange employees was made as a result of an SEC examination of all SRO conflict of interest policies. The SEC staff's recommendation arose from a 1996 incident in which an Amex member made a \$70,000 loan to an Amex floor employee.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.